

# Title 192 WAC

## EMPLOYMENT SECURITY DEPARTMENT

9/21/90.] Repealed by 07-23-128, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

### Chapter 192-12 WAC SUBSTANTIVE RULES

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#### DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

##### Chapter 192-28 RECOVERY OF BENEFIT OVERPAYMENTS

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| 192-28-125 | Recovery of benefit overpayment—Notification of right to appeal. [Statutory Authority: RCW 50.12.010 and 50.12.040. 86-17-023 (Order 3-86), § 192-28-125, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-125, filed 10/10/85.] Repealed by 07-23-128, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. |
| 192-28-130 | Minimum payment calculation. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-17-103, § 192-28-130, filed 8/21/90, effective 9/21/90; 88-10-021 (Order 4-88), § 192-28-130, filed 4/29/88.] Repealed by 07-23-128, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.   |
| 192-28-135 | Recovery of benefit overpayment—Overpayment collection and maximum benefit payable. [Statutory Authority: RCW 50.12.010 and 50.12.040. 89-20-065 (Order 5-89), § 192-28-135, filed 10/4/89, effective 11/4/89.] Repealed by 07-23-128, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.  |
| 192-28-145 | Overpayment subject to interest charges. [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-10-044, § 192-28-145, filed 5/2/94, effective 5/2/94; 90-17-105, § 192-28-145, filed 8/21/90, effective 9/21/90.] Repealed by 07-23-128, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.   |
| 192-28-150 | Benefit overpayment interest charges—Definitions. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-17-105, § 192-28-150, filed 8/21/90, effective  |

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 192-12-186 | Training—Commissioner approval or denial of training. [Statutory Authority: RCW 50.12.010 and 50.12.040. 93-16-053, § 192-12-186, filed 7/29/93, effective 8/29/93; Order 2-73, § 192-12-186, filed 11/15/73.] Repealed by 07-23-129, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. |
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### Chapter 192-100 WAC GENERAL TERMS DEFINED

#### WAC

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| 192-100-050 | Fraud defined.                                   |
| 192-100-500 | General definitions—Relating to wages and taxes. |

**WAC 192-100-050 Fraud defined.** (1) For purposes of RCW 50.20.070, 50.20.190, and chapter 192-220 WAC, fraud means an action by an individual where all of the following elements are present:

(a) The individual has made a statement or provided information.

(b) The statement was false.

(c) The individual either knew the statement was false or did not know whether it was true or false when making it.

(d) The statement concerned a fact that was material to the individual's rights and benefits under Title 50 RCW.

(e) The individual made the statement with the intent that the department would rely on it when taking action.

(2) To decide whether an individual has committed fraud, the elements in subsection (1) must be shown by clear, cogent, and convincing evidence. Fraud cannot be presumed. Circumstantial evidence, rather than direct evidence, is enough to establish fraud if the evidence is clear, cogent, and convincing.

(3) This definition of fraud also applies to the term "misrepresentation" in RCW 50.20.190. A violation of RCW 50.20.070 must meet this definition of fraud.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-100-050, filed 11/21/07, effective 1/1/08.]

**WAC 192-100-500 General definitions—Relating to wages and taxes.** For purposes of unemployment insurance taxes only:

(1) **Wages.** Includes all payments for personal services performed by an employee for an employer including the cash value of all remuneration paid in any medium other than cash including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for the employer.

(2) **Wages paid.** Includes wages that are actually received by an individual and wages that are contractually due but are not paid because the employer refuses or is unable to make such payment. (See RCW 50.24.015).

(3) **Wages constructively paid.** Those wages set aside, by mutual agreement of both parties (employer and employee) to be paid at a later date. They are reported for tax purposes when actually paid to the employee. The wages set aside can have no substantial limitation or restriction as to the time or manner or condition upon which payment is to be made. In addition the ability to draw on the wages must be within the control and disposition of the employee.

(4) **Deductions.** The amount(s) any federal or state law requires an employer to deduct from the wages of an individual in its employ; and to pay the amount deducted to the federal or state government, or any of their political subdivisions. The amount deducted will be considered wages and to have been paid to the individual at the time of the deduction. Other amounts deducted from the wages of an individual by an employer also constitute wages paid to the individual at the time of the deduction.

(5) **Nominal stipends.** A stipend is considered nominal when it does not exceed six hundred dollars per year.

(6) **Contributions.** Title 50 RCW generally uses the term "contributions" to refer to unemployment taxes. Title 192 WAC generally uses the term "unemployment taxes" to refer to contributions. The two terms are treated interchangeably unless the context provides otherwise.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-100-500, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.12.010. 99-20-125, § 192-100-500, filed 10/6/99, effective 11/6/99.]

## Chapter 192-110 WAC

### APPLYING FOR UNEMPLOYMENT BENEFITS

#### WAC

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| 192-110-005 | Applying for unemployment benefits—General.        |
| 192-110-010 | Applications for benefits by interstate claimants. |
| 192-110-020 | How will the department verify my identity?        |
| 192-110-050 | How do I reopen my claim?                          |

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 192-110-210 | Claim cancellation. [Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-110-210, filed 12/9/04, effective 1/9/05.] Repealed by 07-22-055, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010 and 50.12.040. |
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#### WAC 192-110-005 Applying for unemployment benefits—General. (1) How do I apply for benefits?

- (a) You may apply for benefits by:
  - (i) Calling the unemployment claims telecenter listed in your local telephone directory; or
  - (ii) Using the department's internet web site. However, you must apply by telephone if you worked in any state other than Washington during the previous two years, or you were off work for 13 or more consecutive weeks because of injury or illness.
- (b) If you have a physical or sensory disability, or are in unusual circumstances that makes filing by telephone or

internet difficult, the commissioner may authorize other methods of applying for benefits.

#### (2) When can I apply?

(a) You may apply by telephone at any time between the hours of 8:00 a.m. and 5:00 p.m. (Pacific Time) Monday through Friday (excluding state holidays), even if you are working. To control workload, the department may assign certain days of the week on which you may file your claim by telephone.

(b) You may apply on the internet at any time.

(3) **When is my claim effective?** Your claim is effective on the Sunday of the week in which you file it.

(4) **What information am I required to provide?** The minimum information needed to process your application is your:

(a) Legal name; and

(b) Social Security account number.

You should also be prepared to provide the names, addresses, dates worked, and reasons for job separation for all of your employers during the past two years. Other information may be requested in individual circumstances.

(5) **Will I receive benefits immediately?** The first week you are eligible for benefits is your waiting week. You will not be paid for this week. However, you must file a claim for this week before we can pay you any benefits for future weeks.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-110-005, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-110-005, filed 4/5/99, effective 5/6/99.]

**WAC 192-110-010 Applications for benefits by interstate claimants. (1) What is an "interstate claimant"?** An "interstate claimant" is a person who files a claim for one state's unemployment benefits from another state. The state that pays your claim is called the "liable state." For example:

(a) You are an interstate claimant if you live in Oregon and file a claim from Oregon for benefits that will be paid by Washington.

(b) You are an interstate claimant if you live in Washington and file a claim in Washington for benefits that will be paid by Oregon.

(c) You are NOT an interstate claimant if you live in Oregon but file your claim for Washington benefits in Washington; this is because your claim was filed in the same state that will be paying your benefits.

(2) **Where can I apply for benefits?** You can apply for benefits from any state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada. However, if you served in the military or earned wages in more than one state during the past two years, you must physically be in the state of Washington to apply for benefits against Washington.

#### (3) How do I apply for benefits?

(a) Call the unemployment claims telecenter in Washington. If you worked in any state other than Washington within the last two years, an agent will help you decide which state will pay your claim.

(i) If Washington will pay your claim, we will take your application for benefits over the telephone;

(ii) If another state will pay your claim, an agent will tell you how to file your claim with that state.

(b) If you worked only in Washington during the previous two years, you may apply for benefits on the internet.

(4) **Who decides if I am eligible for benefits?** Every state has its own laws which control eligibility for benefits. If you file a claim for Washington benefits, your eligibility for benefits will be decided by Washington state law even if you file from another state. If you file for benefits against another state, your eligibility for benefits will be decided under that state's laws.

(5) **When can I apply for benefits?** You can apply for benefits at any time, even if you are working. However, if you already have a valid claim in one state, you must continue with that claim as long as benefits are available before you can establish a new claim against another state. A "valid" claim is one that has not been denied, terminated, or the benefits exhausted (paid out).

(6) **How do I file an appeal?** If you wish to file an appeal about your claim, you must file it directly with the state that is paying your claim (liable state):

(a) If Washington is paying your claim, use one of the filing methods listed in WAC 192-04-060. If mailed, your appeal will be considered filed on the postmarked date.

(b) If another state is paying your claim, mail your appeal directly to that state.

All appeal hearings will be conducted by the liable state. The liable state will notify you of the date, time, and telephone number or location of the hearing.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-110-010, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20-010 and 50.12.040. 99-15-069, § 192-110-010, filed 7/19/99, effective 8/19/99.]

**WAC 192-110-020 How will the department verify my identity?** When you apply for benefits, we will ask you questions based on information in our records, such as your work history.

(1) If we can verify your identity with these questions, we will file your application for benefits.

(2) If we cannot verify your identity through questioning, we will send you a verification form:

(a) If you complete and return the verification form to the department, and it provides satisfactory evidence of your identity, your claim will be effective based on the date of your first telephone call;

(b) If you do not complete or return the verification form, or it does not satisfy the department of your identity, we will deny your benefits.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-110-020, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20-010 and 50.12.040. 99-08-073, § 192-110-020, filed 4/5/99, effective 5/6/99.]

**WAC 192-110-050 How do I reopen my claim?** (1) If you do not file a claim for one or more weeks, you must reopen your claim.

(a) If it has been fewer than four weeks since you last claimed, you must reopen your claim by calling the unemployment claims telecenter and asking an agent to reopen your claim.

(b) If you have not claimed benefits for four or more weeks, you may reopen your claim on the internet. However,

you must do so **before** the last working day of the week (which is usually Friday). Otherwise you must call the unemployment claims telecenter and speak to an agent to reopen your claim.

(2) Your claim will be reopened effective on Sunday of the week in which you contact the department. You cannot receive benefits for any prior weeks unless you can show good cause for not reopening your claim earlier.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-110-050, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20-010 and 50.12.040. 99-08-073, § 192-110-050, filed 4/5/99, effective 5/6/99.]

## Chapter 192-130 WAC EMPLOYER NOTICES

### WAC

192-130-080

Procedure—Separation issues.

### WAC 192-130-080 Procedure—Separation issues.

(1) The department will not make a decision on a separation issue (RCW 50.20.050 or 50.20.066) until both the employer and the claimant have had an opportunity to present information and rebuttal, if necessary and appropriate, about the separation.

(2) If an employer does not respond to the notice within ten days as required by WAC 192-130-060, the department may make a decision at that time based on available information.

(3) If the employer mails separation information to the unemployment claims telecenter identified on the notice after the end of the ten day response period, but before the decision has been made, the department will consider that information before making a decision.

(4) If the employer submits separation information to the department within thirty days after a decision has been mailed, the department will consider that information for the purposes of a redetermination under RCW 50.20.160 or as an appeal of the decision.

(5) Any information received within thirty days of the mailing of the notice required by WAC 192-130-060 will be considered a request for relief of benefit charges under RCW 50.29.021.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-130-080, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12-010, 50.12.040, 50.12.042. 05-01-076, § 192-130-080, filed 12/9/04, effective 1/9/05.]

## Chapter 192-140 WAC REPORTING REQUIREMENTS TO RECEIVE BENEFITS

### WAC

192-140-100

What happens if I do not respond to a request for information about a discharge from work?

192-140-220

What happens if I do not respond to a request for information about my corporate officer status?

**WAC 192-140-100 What happens if I do not respond to a request for information about a discharge from work?** (1) If you do not respond to a request for information about a discharge from work and have not given the depart-

ment enough information to identify or contact the employer, the department will presume the employer discharged you for misconduct connected with the work. Benefits will be denied under RCW 50.20.066. If you have given the department enough information to contact the employer, benefits will not be denied unless the employer shows by a preponderance of evidence that you were discharged for misconduct connected with your work.

(2) This denial is for an indefinite period of time and will continue until you meet the requalification provisions of RCW 50.20.066.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-140-100, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-100, filed 12/9/04, effective 1/9/05.]

**WAC 192-140-220 What happens if I do not respond to a request for information about my corporate officer status?** If you do not respond to a request for information about your corporate officer status, the department will presume you are not unemployed as defined in RCW 50.04.310 and benefits will be denied under RCW 50.20.010. This denial is for an indefinite period of time and will continue until you show you are unemployed as defined under RCW 50.04.310.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-140-220, filed 11/21/07, effective 1/1/08.]

## Chapter 192-150 WAC

### JOB SEPARATIONS

#### WAC

|             |   |
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| 192-150-110 | Mandatory military transfers—RCW 50.20.050 (2)(b)(iii).                         |
| 192-150-150 | When is a separation considered a refusal of new work?                          |
| 192-150-200 | General provisions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066. |
| 192-150-215 | Discharges for gross misconduct—Responsibility for providing information.       |
| 192-150-220 | Discharges for gross misconduct—Definitions—Canceling wage credits.             |

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 192-150-065 | What constitutes an employer-initiated mandatory transfer under RCW 50.20.050 (1)(b)(iii)? [Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-065, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150 (10). 01-11-085, § 192-150-065, filed 5/16/01, effective 6/16/01.] Repealed by 07-22-055, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010 and 50.12.040. |
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**WAC 192-150-110 Mandatory military transfers—RCW 50.20.050 (2)(b)(iii).** (1) Any military transfer is considered mandatory if your spouse receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may show good cause to quit work if you relocate for your spouse's employment that was due to a mandatory military transfer if:

(a) Your spouse's new duty station is outside your existing labor market. For claims with an effective date prior to July 2, 2006, the new duty station must be in Washington or

another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse; and

(b) You continued to work for your previous employer for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse to a new duty location; or

(b) Your spouse leaves military service and you elect to relocate to your home of record or elsewhere.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-150-110, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-110, filed 12/9/04, effective 1/9/05.]

**WAC 192-150-150 When is a separation considered a refusal of new work?** (1) Section 3304 (a)(5) of the Federal Unemployment Tax Act and RCW 50.20.110 state that you cannot be denied benefits if you refuse to accept new work when the wages, hours, or other working conditions are substantially less favorable than those prevailing for similar work in your local labor market.

(2) For purposes of this chapter, "new work" includes an offer by your present employer of:

(a) Different duties than those you agreed to perform in your current employment contract or agreement; or

(b) Different terms or conditions of employment from those in the existing contract or agreement.

(3) When your employer changes your pay, hours, or conditions of work in a manner that does not constitute good cause under RCW 50.20.050(2), the department will decide if the change is an offer of new work. If it is, the department will also decide if the new work is substantially less favorable than similar work in your local labor market.

(a) If the department decides the change constitutes an offer of new work, and the new work is substantially less favorable, the department will treat the separation as a layoff due to lack of work and adjudicate the issue of the refusal of new work under RCW 50.20.080.

(i) The department will adjudicate the refusal of new work even if you have not claimed benefits for the week in which you refused the new work; and

(ii) The employer offering the new work is an interested party to the work refusal decision.

(b) If the department decides the change is not an offer of new work, or the new work is not substantially less favorable, it will adjudicate the separation from work as a voluntary quit under RCW 50.20.050(2) or a discharge under RCW 50.04.-294, as appropriate.

(4) If the employer reduces your pay or hours by ten percent or less, the department will presume that it is not substantially less favorable and adjudicate the separation under RCW 50.20.050(2) or a discharge under RCW 50.04.294, as appropriate. You can overcome this presumption by providing additional information to the department that shows the job was not suitable as provided in RCW 50.20.110.

(5) If you continue working for your employer after being notified of the change(s) in working conditions, the department will consider that you have agreed to the new terms and conditions of employment and have accepted the offer of new work. If you later quit work because of these changes, the department will consider that you have voluntarily left work for personal reasons. This provision does not apply when you give notice of your intent to quit work upon being notified of the change(s) in working conditions and simply continue to work during an agreed upon notice period. In addition, you may continue working during an employer-provided grievance or arbitration period in response to the change in working conditions without the department considering that you have accepted the new work.

(6) For purposes of this section, the following definitions apply:

(a) "Conditions of work" includes fringe benefits such as life and health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; and severance pay. It also includes job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work.

(b) "Prevailing" means the most typical or customary in a particular occupation for a given area. The department will decide if a wage rate is prevailing for your labor market area based on information provided by its labor market and economic analysis branch.

(c) "Similar work" means similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved.

(d) "Substantially less favorable" means the work is materially reduced below the standard under which the majority of individuals in your occupation and labor market area customarily work, or the work would have a significantly unfavorable impact on you.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-150-150, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.-010, 50.12.040, 50.12.042. 05-01-076, § 192-150-150, filed 12/9/04, effective 1/9/05.]

#### **WAC 192-150-200 General provisions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066.**

(1) The action or behavior that resulted in your discharge or suspension from employment must be connected with your work to constitute misconduct or gross misconduct.

(2) For purposes of this section, the action or behavior is connected with your work if it results in harm or creates the potential for harm to your employer's interests. This harm may be tangible, such as damage to equipment or property, or

intangible, such as damage to your employer's reputation or a negative impact on staff morale.

(3) RCW 50.04.294, subsections (1)(c) and (3)(b), will be distinguished as follows:

(a) Subsection (1)(c) "Carelessness or negligence that causes or would likely cause serious bodily harm to your employer or fellow employee" means that your action results in serious bodily injury or a reasonably prudent person would know it is likely to result in serious bodily injury.

(b) Subsection (3)(b) "Inadvertence or ordinary negligence in isolated instances" means that your action is an accident or mistake and is not likely to result in serious bodily injury.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-150-200, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.-010, 50.12.040, 50.12.042. 05-01-076, § 192-150-200, filed 12/9/04, effective 1/9/05.]

**WAC 192-150-215 Discharges for gross misconduct—Responsibility for providing information.** In any job separation where there is a potential disqualification under RCW 50.20.066(3), the employer is responsible for notifying the department in a timely manner when the issue is resolved.

If an employer notifies the department of a potential disqualification under RCW 50.20.066(3) within ten days of receiving the notice required by WAC 192-130-060, the department will review the claimant's eligibility for benefits.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-150-215, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.-010, 50.12.040, 50.12.042. 05-01-076, § 192-150-215, filed 12/9/04, effective 1/9/05.]

**WAC 192-150-220 Discharges for gross misconduct—Definitions—Canceling wage credits. (1) Definitions.**

(a) "Criminal act" means every action defined as a crime by the applicable state or federal statutes, including felonies and gross misdemeanors.

(b) "Felony" means every crime that is defined as such by the applicable state or federal statutes.

(c) "Gross misdemeanor" means every crime which is defined as such by the applicable state or federal statutes.

(d) A "competent authority" is:

(i) A court (including magistrate or court commissioner), prosecuting attorney, or law enforcement agency; or

(ii) An administrative law judge; or

(iii) A regulatory agency or professional association charged by law with maintaining professional standards or codes of conduct; or

(iv) Any other person or body, other than your employer, with authority to administer disciplinary action against you.

(e) An admission to your employer or to an employee of the department that you have committed a criminal act is not considered an admission to a competent authority for the purposes of RCW 50.20.066.

**(2) Canceling wage credits.**

(a) If you have been discharged for gross misconduct connected with your work:

(i) The department will cancel all your hourly wage credits based on that employment since the beginning of your base period;

(ii) If your wage credits with this employer are fewer than 680 hours, the balance of wage credits up to 680 hours will be canceled proportionately among your base period employers according to each employer's share of your base period wages. Wages from each employer will be removed from the most recent quarter in which wages were reported.

(b) Wage credits may only be canceled based upon an admission of a criminal act if:

(i) You admit to each and every element of a criminal act which caused you to be discharged; and

(ii) The admission is made to a competent authority.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-150-220, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-220, filed 12/9/04, effective 1/9/05.]

## Chapter 192-180 WAC

### JOB SEARCH REQUIREMENTS

#### WAC

|             |   |
|-------------|---|
| 192-180-005 | Registration for work—RCW 50.20.010(1) and 50.20.230.   |
| 192-180-010 | Job search requirements—Directives—RCW 50.20.010 (1)(c) and 50.20.240.                          |
| 192-180-015 | Tracking job search activities—RCW 50.20.240.   |
| 192-180-025 | Job search review interviews.   |
| 192-180-060 | How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011. |

**WAC 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230. (1) Am I required to register for work?** You must register for work unless you are:

(a) Attached to an employer, meaning you are:

(i) Partially unemployed as defined in WAC 192-180-013(1);

(ii) On standby as defined by WAC 192-110-015;

(iii) Unemployed because you are on strike or locked out from the worksite as provided in RCW 50.20.090(2); or

(iv) Participating in the shared work program under chapter 50.60 RCW;

(b) A member of a union that participates in the referral union program (see WAC 192-210-110);

(c) Participating in a training program approved by the commissioner; or

(d) The subject of an antiharassment order. This includes any court-issued order providing for your protection, such as restraining orders, no contact orders, domestic violence protective orders, and similar documents.

**(2) How soon do I have to register?**

(a) If you live within the state of Washington, the department will register you automatically based on information contained in your application for benefits. In unusual circumstances where you are not automatically registered, you must register within one week of the date on which you are notified by the department of the requirement to register for work.

(b) If you live in another state, you must register for work within one week of the date your first payment is issued on your new or reopened claim.

**(3) Where do I register for work?** You will be registered for work with your local WorkSource office. However,

if you live in another state, you must register for work with the equivalent public employment agency in that state.

**(4) What is the penalty if I do not register for work?** You will not be eligible for benefits for any week in which you are not registered for work as required by this section.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-180-005, filed 11/1/07, effective 12/2/07; 99-13-002, § 192-180-005, filed 6/3/99, effective 7/4/99.]

**WAC 192-180-010 Job search requirements—Directives—RCW 50.20.010 (1)(c) and 50.20.240. (1) Do I have to look for work?** You must be actively seeking work unless you are:

(a) Attached to an employer; or

(b) Participating in a training program approved by the commissioner.

**(2) When should I start my job search?** You must look for work every week that you file a claim for benefits, unless you are exempt under subsection (1).

**(3) What are my weekly job search requirements?**

(a) At a minimum, you must:

(i) Make job search contacts with at least three employers each week; or

(ii) Participate in three approved in-person job search activities at the WorkSource office or local employment center, or any combination of employer contacts or in-person job search activities for a total of three.

(b) Based on your individual circumstances, such as your occupation, experience, or labor market area, the department may issue you a directive requiring more than three employer contacts or job search activities each week.

(c) If you are a member of a referral union you must be registered with your union, eligible for and actively seeking dispatch, and comply with your union's dispatch or referral requirements (see WAC 192-210-120). Your benefits may be denied for any weeks in which you fail to meet these requirements and you may be directed to seek work outside of your union.

**(4) What is a "job search contact"?** A job search contact is a contact with an employer to inquire about or apply for a job. You may use job search methods that are customary for your occupation and labor market area, including in-person, telephone, internet, or telefax contacts. The work applied for must be suitable (see RCW 50.20.100) unless you choose to look for work in a lower skill area. A contact does not count if it is made with an employer whom you know is not hiring, or if the department decides the contact is designed in whole or in part to avoid meeting the job search requirements.

**(5) What is an "in-person job search activity"?** This is an activity provided through the WorkSource office or local employment center that will assist you in your reemployment efforts. It includes, but is not limited to, job search workshops, training classes, or other facilitated services provided by WorkSource staff and approved by the local WorkSource administrator. For claimants residing in Washington State, an in-person job search activity must be documented in the department's services, knowledge and information exchange system (SKIES) to qualify. For interstate claimants, the activity must be documented in the one-stop system in the state in which you reside.

(6) **What is a directive?** A directive is a written notice from the department telling you that specific methods of job search are required in order to meet the job search requirements. A written directive need not have been issued to deny benefits for failure to meet the job search requirements in subsection (3).

(7) **When is a directive issued?** The department can issue a directive to clarify or to increase the job search requirements you must meet. Examples include, but are not limited to, cases in which you need to:

- (a) Increase the number of employer contacts each week;
- (b) Change your method of looking for work (such as from resumes to in-person contacts);
- (c) Expand the geographic area in which you look for work; or
- (d) Look for work in a secondary occupation.

(8) **When is the directive effective?** The directive is effective when it is given in writing by the department. It stays in effect until a new written directive is given, or it is rescinded in writing.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-180-010, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.-010, 50.12.040, 50.12.042. 05-01-076, § 192-180-010, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 99-13-002, § 192-180-010, filed 6/3/99, effective 7/4/99.]

**WAC 192-180-015 Tracking job search activities—RCW 50.20.240. (1) Do I need to keep track of my job search activities?** You must keep a record or log of your job search contacts and the in-person job search activities you receive through the WorkSource office or local employment center unless you are:

- (a) A member of a full referral union;
- (b) Allowed benefits because you left work to protect yourself or a member of your immediate family from domestic violence or stalking as provided in RCW 50.20.050 (2)(b)(iv); or
- (c) Exempt from job search requirements under WAC 192-180-010(1).

(2) **What information do I need to keep in the log?** Your job search log must contain at least the following information:

(a) For job search contacts, record the date contact was made; the employer's name, address and telephone number; the type of contact (in-person, telephone, etc.); the name of the person you contacted; and the type of work you applied for;

(b) For in-person job search activities at the WorkSource office or local reemployment center, record the date contact was made; and a description of the services you received or the activities in which you participated.

(3) **Is there a specific form I must use?** The department will supply you with a form (EMS 10313) to use in tracking your job search activities. You may use your own form or tracking method as long as you record all information required by this section.

(4) **How long should I keep my log?** Keep your log for at least sixty days after the end of your benefit year or thirty days after receiving your final payment on any extension of benefits, whichever is later.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-180-015, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-180-015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 99-13-002, § 192-180-015, filed 6/3/99, effective 7/4/99.]

**WAC 192-180-025 Job search review interviews. (1) What is a job search review (JSR) interview?** The JSR is an interview between you and a representative of the WorkSource office or local employment center. Its purpose is to review your job search documentation, identify any barriers to your reemployment, develop a plan for resolving barriers that may be identified, and provide advice on how to improve your job search efforts. For interstate claimants, this interview may be conducted by telephone or by the local employment center in a contracted state.

(2) **Will my job search activities be reviewed?** Yes, you must bring your job search log to the interview. The interviewer will review your log with you and discuss areas in which your job search can be improved. The employer contacts and job search activities included in your log will be verified at random. The interviewer may further verify any reported contacts at his or her discretion.

(3) **How many weeks will be reviewed?**

(a) The interviewer will review at least one week of your job search documentation. If the job search documentation is unsatisfactory, or you fail to appear for the JSR interview without being excused, you will be scheduled for a second interview in which all weeks claimed will be reviewed.

(b) If you are excused from attending the initial JSR interview, you will be rescheduled for a review of one week of your job search documentation.

(4) **When may I be excused from attending the initial JSR?** You may be excused from attending the initial JSR interview only for the following reasons:

- (a) Jury duty;
- (b) National Guard duty;
- (c) Natural disaster or acts of nature; or
- (d) Verifiable employment or a job interview.

(5) **What does "all weeks" mean?** For purposes of this section, "all weeks" means the latest of the following:

- (a) Weeks claimed since you filed your application for benefits; or
- (b) Weeks claimed since your last JSR interview, if applicable.

(6) **Do I need to bring anything else to the JSR interview?** You must be prepared to present proof of your identity during the JSR interview. This includes:

- (a) State or government issued photo identification; or
- (b) Two of the following government-issued documents:
  - (i) Voter's registration card;
  - (ii) U.S. military identification card or draft record;
  - (iii) Military dependent's identification card;
  - (iv) U.S. Coast Guard merchant mariner card;
  - (v) Native American tribal document;
  - (vi) U.S. Social Security card;
  - (vii) Certification of birth abroad issued by the U.S. Department of State;
  - (viii) Original or certified copy of a birth certificate;
  - (ix) U.S. citizen ID card;
  - (x) ID card for use of resident citizen in the United States; or

(xi) Unexpired employment authorization document issued by the United States citizenship and immigration services (USCIS).

[Statutory Authority: RCW 50.12.010 and 50.12.040, 07-22-055, § 192-180-025, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.-010, 50.12.040, 50.12.042, 05-01-076, § 192-180-025, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040, 99-13-002, § 192-180-025, filed 6/3/99, effective 7/4/99.]

**WAC 192-180-060 How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011.** (1) The department will use the profiling model described in this section to identify claimants who are likely to exhaust benefits and in need of job search assistance to obtain new employment.

(2) **Model.** Take all valid claims with a benefit year ending date that falls within a specified two-year time period. Screen out (a) members of unions participating in the referral union program (see WAC 192-210-100) and (b) claimants who do not have a job search requirement (employer attached, in approved training, or unemployed due to strike or lockout) during the first payable week. For the remaining claimants with a job search requirement, statistically combine information on industry, occupation and other personal characteristics, and labor market characteristics to generate a numerical score indicating the likelihood of exhausting benefits before finding work. The scores may range from 0% (no likelihood of exhaustion) to 100% (certainty of exhaustion). Rank claimants based on their individual score from least likely to most likely to exhaust.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012, 07-23-129, § 192-180-060, filed 11/21/07, effective 1/1/08.]

## Chapter 192-200 WAC SCHOOL OR TRAINING

### WAC

|             |   |
|-------------|---|
| 192-200-005 | Disqualification of students—RCW 50.20.095.   |
| 192-200-010 | Training defined—RCW 50.20.043 and 50.20.250.   |
| 192-200-020 | Commissioner approval of training—RCW 50.20.043.  |
| 192-200-030 | May I receive unemployment benefits while I am in training?   |
| 192-200-040 | Who is eligible to participate in the self-employment assistance program?                           |
| 192-200-045 | What training programs may be approved under the self-employment assistance program?                |
| 192-200-050 | What criteria will the department use to approve my self-employment assistance training plan?       |
| 192-200-055 | What other factors affect my eligibility for benefits under the self-employment assistance program? |
| 192-200-060 | What happens if I do not satisfactorily participate in my self-employment assistance training plan? |

**WAC 192-200-005 Disqualification of students—RCW 50.20.095.** (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of twelve or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for twelve or more hours of instruction. You must certify to the department that you are not currently registered for

twelve or more credit hours and will not be registered for twelve or more credit hours for at least sixty days. If you begin classes within sixty days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than sixty days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

(a) Are in approved training under RCW 50.20.043;

(b) Are in an approved self-employment assistance program under RCW 50.20.250; or

(c) Show by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work when you apply.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-010.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent;

(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012, 07-23-129, § 192-200-005, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-200-005, filed 12/9/04, effective 1/9/05.]

**WAC 192-200-010 Training defined—RCW 50.20.043 and 50.20.250.** (1) The term "training" means:

(a) A course of education with the primary purpose of training in skills that will allow you to obtain employment.

(b) A self-employment assistance program that includes entrepreneurial training, approved by the commissioner, that will allow you to become self-employed.

(2) The term "training" does not include a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012, 07-23-129, § 192-200-010, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-200-010, filed 12/9/04, effective 1/9/05.]

**WAC 192-200-020 Commissioner approval of training—RCW 50.20.043.** (1) **How do I apply for commis-**



**sioner approved training?** If you wish to attend school or training while you receive unemployment benefits, and the training will interfere with your availability for full-time work, the training must be approved by the department. Contact the department and ask for an application for commissioner approved training. Your completed application must be returned to the unemployment claims telecenter. We will send you a decision, in writing, denying or approving your training application.

**(2) What factors will the department consider when reviewing my application?** The department will consider the following factors:

- (a) Your plan for completion of the training;
- (b) The nature of the training facility and the quality of the training;
- (c) Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the labor markets in which you intend to seek work;
- (d) Whether an oversupply of qualified workers exists;
- (e) Whether you have the qualifications and aptitudes to successfully complete such training; and
- (f) Whether your employment prospects in occupations in which you have training or experience do not exist or have substantially diminished in the labor market to the extent that the department determines you will probably be unemployed for a lengthy period. These diminished prospects could be the result of business or economic conditions in the area, or due to personal reasons such as your health, physical fitness, criminal background, or other circumstances of a similar nature.

**(3) What about training that is required by my job?** The commissioner will approve training that is required within an occupation if:

- (a) The training is a condition of your continued employment;
- (b) The scheduling of the training is determined by your employer or a work related entity, and not by you (the claimant); and
- (c) The training meets the requirements of subsections (2)(a), (b), (c), (d), and (e) of this section.

**(4) Can academic training be approved?** An academic training course may be approved if the conditions of subsections (1) and (2) of this section are met, and the training meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

**(5) Can these requirements be waived?** In the case of individuals with physical or sensory handicaps, or in other unusual individual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

**(6)** This section does not apply to training in a self-employment assistance program under RCW 50.20.250.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-020, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-200-020, filed 4/5/99, effective 5/6/99.]

**WAC 192-200-030 May I receive unemployment benefits while I am in training?** (1) To be eligible for unem-

ployment benefits while in training, you must meet the following criteria:

(a) The training must be full-time as defined by the training facility, including skills training classes designated as full-time by the local WorkSource administrator; and

(b) You must be making satisfactory progress in training. Except as provided in subsection (c), "satisfactory progress" is defined in WAC 192-270-065; or

(c) If you are enrolled in an approved self-employment assistance program under RCW 50.20.250, "satisfactory progress" means you are attending classes and participating in other activities related to setting up a business within the timeframes outlined in your approved training plan.

(d) The certification that you are making satisfactory progress in full-time training must be signed by the registrar or equivalent person designated by the training facility.

(2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.

(3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search requirements of RCW 50.20.010 (1)(c) and 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-030, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-200-030, filed 12/9/04, effective 1/9/05.]

**WAC 192-200-040 Who is eligible to participate in the self-employment assistance program?** (1) **Eligibility.** To be eligible for the self-employment assistance program, you must:

(a) Be otherwise eligible for regular unemployment benefits;

(b) Have been identified by the department as likely to exhaust regular unemployment benefits using the profiling model established under RCW 50.20.011 and WAC 192-180-060; and

(c) Enroll and satisfactorily participate in a self-employment assistance program approved by the commissioner.

(2) **Likely to exhaust.** The department will use the following process to identify claimants who are likely to exhaust for purposes of the self-employment assistance program:

(a) Assign profile scores to individuals with a claim ending during the most recent federal fiscal year (October 1 through September 30) using the model described in WAC 192-180-060.

(b) Find the number of these claimants who actually exhausted regular unemployment benefits and determine their percentage of the entire profiled population;

(c) The result will determine the percentile of profiled scores that will be identified as likely to exhaust. For example, assume during the most recent federal fiscal year, fifteen percent of profiled claimants actually exhaust benefits. This means the eighty-fifth percentile of profile scores will be used to identify claimants who are likely to exhaust.

(d) Determine the lowest score assigned to claimants within this group.

(e) Claimants with that score or higher who file new claims during the following calendar year will be notified by the department they are potentially eligible for the self-employment assistance program.

(3) **Satisfactory participation.** The department will consider you to be satisfactorily participating if you are making satisfactory progress as defined in WAC 192-200-030 (1)(c).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-040, filed 11/21/07, effective 1/1/08.]

**WAC 192-200-045 What training programs may be approved under the self-employment assistance program?** (1) To be approved as a training provider under the self-employment assistance program, a training program must include the following:

- (a) Entrepreneurial training;
- (b) Business counseling;
- (c) Technical assistance; and
- (d) Requirements to engage in other activities relating to setting up a business and becoming self-employed.

(2) The commissioner will develop and maintain a list of approved training providers.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-045, filed 11/21/07, effective 1/1/08.]

**WAC 192-200-050 What criteria will the department use to approve my self-employment assistance training plan?** The department will consider the following factors when reviewing your application for the self-employment assistance program:

- (1) That you have an adequate financial plan for completing training if your unemployment benefits run out before you complete training;
  - (2) That you have the qualifications and aptitudes to successfully complete the training; and
  - (3) That you have certified you will not compete with your former employer for up to one year after completing your training program.
- (4) If you modify your training plan, the changes must be approved in advance by your training provider and the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-050, filed 11/21/07, effective 1/1/08.]

**WAC 192-200-055 What other factors affect my eligibility for benefits under the self-employment assistance program?** (1) Any remuneration you receive while enrolled in a self-employment assistance training program will be deducted from your weekly benefit amount as required under RCW 50.20.130.

(2) If you complete your training program before your unemployment benefits run out, you are no longer eligible for benefits unless you meet the availability for work and job search requirements of RCW 50.20.010 (1)(c).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-055, filed 11/21/07, effective 1/1/08.]

**WAC 192-200-060 What happens if I do not satisfactorily participate in my self-employment assistance training plan?** (1) If your training provider notifies the department that you are not satisfactorily participating in your approved training, the department will notify you in writing that you are no longer eligible for the self-employment assistance program. You will be required to meet the availability for work and job search requirements of RCW 50.20.010 (1)(c) to remain eligible for unemployment benefits.

(2) If you have been removed from the program because you failed to participate in a training plan, you will not be able to re-enroll in the program during your current benefit year.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-060, filed 11/21/07, effective 1/1/08.]

## Chapter 192-210 WAC

### SPECIAL CATEGORY OCCUPATIONS

#### WAC

192-210-005 Definitions—Educational employees.

**WAC 192-210-005 Definitions—Educational employees.** (1) **Contract.** An agreement that is binding on an educational institution to provide work and on an individual to perform services.

(2) **Faculty.** A teacher, counselor, librarian, or other position with similar training, experience and level of responsibility.

(3) **Full-time employment.** Employment designated as full time for or at the educational institution under a collective bargaining agreement, individual hiring contract, or other agreement (including institutional policies), as provided in RCW 50.04.310(2). For faculty at public institutions, the hiring contract, agreement or institutional policy must be consistent with the provisions of RCW 28A.405.210 (kindergarten through twelfth grade), RCW 28B.50.851 (community and technical colleges), RCW 28B.35.120 (regional universities), or RCW 28B.20.130 (other colleges and universities).

(4) **Under the same terms and conditions of employment.** This includes economic conditions of employment such as wages, duration of contract, hours of work, and general nature of the work. It does not include other conditions and details such as the specific work location, duties, or assignment. The position need not be identical to the previous position to meet this test. A position would be considered to be under the same terms and conditions of employment if it is of similar type or classification, with similar pay, fringe benefits, hours of work, general type of work, and duration of employment.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-210-005, filed 11/1/07, effective 12/2/07; 02-19-009, § 192-210-005, filed 9/5/02, effective 10/6/02. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 99-18-066, § 192-210-005, filed 8/31/99, effective 10/1/99.]

**Chapter 192-220 WAC**  
**OVERPAYMENT NOTICE, ASSESSMENT AND**  
**FRAUD**

**WAC**

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| 192-220-040 | How will the disqualification period and penalty established by RCW 50.20.070 be assessed?                            |
| 192-220-045 | How is the fraud penalty calculated?—RCW 50.20.070.   |
| 192-220-050 | Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision? |
| 192-220-060 | Will I be notified of my right to appeal the overpayment?   |
| 192-220-070 | Overpayments under RCW 50.12.070 (2)(c).  |

**WAC 192-220-015 What is an overpayment assessment?** As used in this chapter and chapter 192-230 WAC, the term "overpayment assessment" includes both unemployment benefits you received for which you were not eligible as well as any penalty assessed under RCW 50.20.070 resulting from fraud.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-220-015, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-040 How will the disqualification period and penalty established by RCW 50.20.070 be assessed?** (1) RCW 50.20.070 provides for increasing disqualification periods and dollar penalties when a second, third or subsequent fraud is committed. The department will decide whether an action is the first, second, third or subsequent occurrence based on the factors in this section.

(2) Once the department mails a fraud decision, any fraud that is found for weeks filed before, or within fourteen days after, the mailing date of the decision will be treated as part of the same occurrence of fraud. This applies even if the decisions involve different eligibility issues.

Example: A fraud decision is mailed on June 1 for weeks claimed on April 30. On July 1, a decision is mailed assessing fraud for weeks claimed on March 31. Both decisions will be treated as the same level occurrence because the weeks covered by the July 1 decision were filed before the June 1 decision was mailed.

(3) The department will treat any fraud for weeks filed more than fourteen days after the mailing date of a prior fraud decision as a separate occurrence of fraud. This applies even if the weeks claimed occur before the weeks for which fraud was assessed in the prior decision.

Example: On June 1, a decision is mailed assessing fraud for weeks you claimed on March 31. On July 10, late claims are filed for weeks before March 31 in which fraud is committed. The later decision is treated as a subsequent occurrence of fraud because the late claims were filed more than fourteen days after June 1.

(4) The department will assess a disqualification period and penalty for each fraud decision issued based on whether it is a first, second, third or subsequent occurrence.

Example 1: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks beginning with the week of June 1. Another fraud decision is issued on June 12 that is found to be part of the first occurrence. The disqualification period is twenty-six weeks beginning with the week of June 1st.

Example 2: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks beginning with the week of June 1. A second occurrence of fraud is assessed on July 10 with a disqualification period of fifty-two weeks beginning with the week of July 10 and a penalty of twenty-five percent for the weeks fraudulently paid.

(5) All disqualifications and penalties in this section are in addition to the required repayment of any benefits paid as a result of fraud.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-220-040, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-045 How is the fraud penalty calculated?—RCW 50.20.070.** (1) The department will assess the penalty established under RCW 50.20.070 for second, third, or subsequent occurrences of fraud based on a percentage of benefits paid for those weeks in which the fraud occurred or that were paid as a result of fraud. The penalty will not apply to other weeks that may be included in the same eligibility decision.

(a) For a second occurrence, the penalty is twenty-five percent of benefits overpaid.

(b) For a third or subsequent occurrence, the penalty is fifty percent of benefits overpaid.

(2) The penalty amount, if not a multiple of one dollar, is rounded up to the next higher dollar.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-220-045, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-050 Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision?** (1) The department will issue a new decision showing the corrected disqualification period and penalty if a disqualification period or penalty changes because of a change to another fraud decision following a redetermination or appeal.

Example 1: A first occurrence of fraud is assessed on June 1 and a second occurrence is assessed on July 10. The June 1 fraud assessment is overturned through appeal, making the July 10 decision the first occurrence. The department will issue a correction to the July 10 decision showing the penalty for a first occurrence of fraud (twenty-six week disqualification and no dollar penalty).

Example 2: A decision assessing a first occurrence of fraud is mailed on August 1 and benefits are denied for the following twenty-six weeks. On August 10, another fraud decision is mailed which is considered part of the first occurrence and denies benefits for the twenty-six weeks beginning August 1. The fraud included in the August 1 decision is overturned through appeal. The August 10 decision remains and the department will issue a correction showing the twenty-six week denial period begins with the August 10 mailing date.

(2) Although the revised decision does not restart the appeal period included in the original decision, you may appeal a change in the penalty or period of disqualification.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-220-050, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-060 Will I be notified of my right to appeal the overpayment?** (1) The department will notify you and all interested employers in writing about the overpayment assessment and the right to appeal any of the following elements of the assessment:

- (a) The reason for the overpayment.
- (b) The amount of the overpayment.
- (c) The finding of fault or nonfault.
- (d) The reason waiver of the overpayment was allowed or denied.

(2) As used in this chapter, an interested employer is:

(a) An employer that provides information to the department which results in an overpayment assessment.

(b) Any base year employer who reimburses the trust fund for benefits paid instead of paying unemployment taxes to the extent waiver is allowed.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-220-060, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-070 Overpayments under RCW 50.12.070 (2)(c).** You are not required to repay benefits improperly paid to you because an employer failed to correctly report your wages or hours and a later correction results in a lower benefit amount or your claim becomes invalid. However, you remain liable for any overpayment assessment resulting from an eligibility decision issued before your claim became invalid that has become final.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-220-070, filed 11/21/07, effective 1/1/08.]

## Chapter 192-230 WAC RECOVERY OF OVERPAYMENTS

### WAC

|             |  |
|-------------|--|
| 192-230-010 | Repayment terms defined.                                     |
| 192-230-020 | How are cash payments and offsets applied to my overpayment? |
| 192-230-030 | How is the minimum payment calculated?                       |
| 192-230-040 | When are interest charges added to my overpayment?           |
| 192-230-090 | May I repay an overpayment by offset against my benefits?    |

**WAC 192-230-010 Repayment terms defined.** For purposes of this chapter, the following definitions apply:

(1) **Outstanding balance** means the total of all unpaid overpayment assessments (including penalties), court costs, interest charges, and surcharges.

(2) **Due date** means the date by which the minimum monthly payment must be received by the department as shown on the monthly billing statement mailed to your last known address.

(3) **Delinquent** means your minimum monthly payment is not received by the department on or before the due date.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-230-010, filed 11/21/07, effective 1/1/08.]

**WAC 192-230-020 How are cash payments and offsets applied to my overpayment?** (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year.

If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1), the department will apply cash payments to the outstanding balance in the following order:

- (a) Court costs.
- (b) Interest.
- (c) Penalties based on fraud.
- (d) Overpaid benefits.
- (e) Surcharge assessed under RCW 41.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-230-020, filed 11/21/07, effective 1/1/08.]

**WAC 192-230-030 How is the minimum payment calculated?** The department will calculate your minimum monthly payment as described in this section, unless we approve another payment amount.

(1) If the overpayment was assessed by another state, the department will not calculate a minimum monthly payment. If the overpayment is being recovered by offset against future benefits, recovery will be done as described in WAC 192-230-100(4).

(2) For overpayments due to fraud, your minimum monthly payment will be the greater of (a) your weekly benefit amount or (b) three percent of your outstanding balance when the billing statement is mailed, rounded down to the next whole dollar amount.

(3) For all other overpayments, your minimum monthly payment will be the greater of (a) one-third of your weekly benefit amount, (b) three percent of your outstanding balance when the billing statement is mailed, rounded down to the next whole dollar amount, or (c) twenty-five dollars.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-230-030, filed 11/21/07, effective 1/1/08.]

**WAC 192-230-040 When are interest charges added to my overpayment?** (1) Interest will not be charged on an overpayment assessed by another state.

(2) Interest will be charged at the rate of one percent per month for overpayments based on fraud. The interest will be charged on both the overpaid benefits and the fraud penalty, if any. If you appeal the finding of fraud, interest will accrue while the appeal is pending and will be added to your overpayment if the finding of fraud is upheld.

(3) If the overpayment is not based on fraud, interest will be charged at the rate of one percent per month when any portion of two or more minimum monthly payments is delinquent.

(4) If the overpayment includes both fraud and nonfraud weeks, interest will be charged proportionally as described in subsections (2) and (3).

(5) In unusual circumstances, and at his or her discretion, the commissioner may suspend the assessment or collection of interest charges for overpayments not based on fraud.

(6) When calculating the interest charges, a month begins on the day following the last Saturday of one month and ends on the last Saturday of the next month.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-230-040, filed 11/21/07, effective 1/1/08.]

**WAC 192-230-090 May I repay an overpayment by offset against my benefits?** (1) You may ask to repay an overpayment by offset on a valid benefit year as described in WAC 192-230-100. However, if the new balance available on your current benefit year is equal to or less than the balance of an overpayment on that benefit year, offset will be done at the rate of one hundred percent.

(2) You may ask to repay overpayments owing on prior benefit years by offset as described in WAC 192-230-100.

(3) During any valid benefit year, the total amount of benefits paid to you plus offset credits granted will not exceed the maximum benefits payable on the claim.

(4) If offset of an overpayment is granted against weeks that are later found to have been paid in error or as a result of fraud, the offset for the week(s) will be canceled and the amount will be restored to your overpayment balance.

(5) If any portion of this section conflicts with federal law or regulations, the federal law or regulations will apply.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-230-090, filed 11/21/07, effective 1/1/08.]

## Chapter 192-240 WAC EXTENDED BENEFITS

### WAC

|             |  |
|-------------|--|
| 192-240-020 | Suitable work provisions—Extended benefits—RCW 50.22.020 (3) and (4).                |
| 192-240-025 | Failure to apply for or accept suitable work—RCW 50.22.020 (4)(b)—Extended benefits. |
| 192-240-030 | Job search requirements to receive extended benefits—RCW 50.22.020(5).               |
| 192-240-040 | Penalties.   |

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

|             |  |
|-------------|--|
| 192-240-010 | Regular shareable benefits defined. [Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-010, filed 2/26/03, effective 3/29/03.] Repealed by 07-22-055, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010 and 50.12.040.   |
| 192-240-035 | How to qualify for regular shareable or extended benefits after leaving work for marital or domestic reasons—RCW 50.22.020(7). [Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-240-035, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-035, filed 2/26/03, effective 3/29/03.] Repealed by 07-22-055, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010 and 50.12.040. |

**WAC 192-240-020 Suitable work provisions—Extended benefits—RCW 50.22.020 (3) and (4).** (1) An individual receiving benefits must be available for suitable work. Except as provided in subsection (2), any job is considered suitable if you are receiving extended benefits unless:

(a) It is not within your capabilities;

(b) The position is vacant because of a labor dispute, working conditions are substantially less favorable than similar work in the area, or you would be required to join or resign from a union or labor organization (see RCW 50.20.-110);

(c) The gross weekly pay is less than your weekly benefit amount, plus any supplemental unemployment benefits you receive from your former employer; or

(d) The job pays less than the higher of the federal or state minimum wage.

(2) If you can show that you have good prospects of returning to work in your customary occupation within a reasonably short period of time, suitable work is considered to be work in keeping with your prior work experience, education, or training. "Good prospects for work" means you have:

(a) A definite recall or hire date within four weeks; or

(b) A probable recall or hire date within four weeks, based on an extremely favorable position on a union out-of-work list, seasonal factors, or historical experience.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-240-020, filed 11/1/07, effective 12/2/07; 03-06-038, § 192-240-020, filed 2/26/03, effective 3/29/03.]

**WAC 192-240-025 Failure to apply for or accept suitable work—RCW 50.22.020 (4)(b)—Extended benefits.** (1) You will be denied extended benefits if you fail:

(a) To accept any offer of suitable work as defined in WAC 192-240-020; or

(b) To accept a referral, or to apply for suitable work, when referred by your local employment center, if the job was:

(i) Offered to you in writing, or

(ii) Listed with the department.

(2) The denial is for the week in which the refusal occurs and until you work in four weeks and earn four times your weekly benefit amount.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-240-025, filed 11/1/07, effective 12/2/07; 03-06-038, § 192-240-025, filed 2/26/03, effective 3/29/03.]

**WAC 192-240-030 Job search requirements to receive extended benefits—RCW 50.22.020(5).** (1) To be eligible for extended benefits, you must show evidence of a systematic and sustained effort to find work. Your efforts must be of a quality and frequency that clearly indicate you are making sincere efforts to immediately return to gainful employment.

(a) At a minimum, your efforts must include at least four job search contacts with employers during each week you claim benefits.

(b) If you are a registered member of a referral union, you must make three job search contacts each week in addition to contacting your union and complying with the union's requirements.

(i) Registration with another union local can constitute one job search contact if you are willing to travel or relocate to accept work in their jurisdiction.

(ii) You do not have to look for work that would jeopardize your union membership, but must look for other work you are capable of doing.

(iii) If you have been identified by the department as having good prospects of returning to work within four weeks because you have an extremely favorable position on the union out-of-work list, contact with your union each week meets the job search requirements of this section.

(2) Every week you file a claim for extended benefits, you must report your job search contacts to the department. For each job search contact you must report the date of the contact, the employer or union involved and its place of business, the method of contact, and the type of work sought.

(3) You must keep a record or log of your job search contacts which contains the information required by WAC 192-180-015.

(4) The department may review your job search activities at any time. You must provide the department with a copy of your job search log upon request. Employer contacts will be verified by the department as needed.

(5) The department will consider you to have met the job search requirements of this section and of RCW 50.22.020(5) for any week in which you participate in a training program that is approved by the commissioner.

(6) The job search requirements under this section and RCW 50.20.020(5) are waived for any week in which you are unable to conduct a job search because you are serving on jury duty. See RCW 50.20.117.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-240-030, filed 11/1/07, effective 12/2/07; 03-06-038, § 192-240-030, filed 2/26/03, effective 3/29/03.]

**WAC 192-240-040 Penalties.** (1) If you claim extended benefits during a week in which you failed to accept any offer of work, or failed to accept a referral or apply for any work as directed by the department:

(a) Benefits will be denied under RCW 50.20.080 if the work was suitable as defined by RCW 50.20.100 and 50.20.110, and you did not have good cause for failing to apply for or accept work;

(b) If benefits are denied as provided in subsection (1)(a), you will also be denied benefits as provided in RCW 50.22.020;

(c) Benefits will be denied under only RCW 50.22.020 if the work was suitable as provided in that statute and WAC 192-240-020, but did not meet the provisions of RCW 50.20.100 and 50.20.080.

(2) If you claim extended benefits during a week in which you failed to meet the job search requirements of WAC 192-240-030, benefits will be denied under RCW 50.22.020, except as provided in subsection (4).

(3) A denial of benefits under RCW 50.22.020 starts the week in which the failure occurs, and continues indefinitely until you show that:

(a) You have worked in at least four weeks; and

(b) You have earned at least four times your weekly benefit amount. The employment does not need to be covered by Title 50 RCW.

(4) If you fail to meet the job search requirements of WAC 192-240-030 because you are hospitalized for treatment of an emergency or life-threatening condition, benefits will be denied under RCW 50.20.010 (1)(c). The denial period is only for the week or weeks in which the hospitalization occurred.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-240-040, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-240-040, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-040, filed 2/26/03, effective 3/29/03.]

## Chapter 192-300 WAC REGISTERING FOR UNEMPLOYMENT INSURANCE TAXES

### WAC

|             |   |
|-------------|---|
| 192-300-010 | What documentation and liability requirements apply to employer representatives?  |
| 192-300-060 | What are reimbursable employers?  |
| 192-300-170 | Requirements for election of unemployment insurance coverage.   |
| 192-300-180 | Joint accounts.   |
| 192-300-185 | Branch accounts.  |
| 192-300-200 | What is a professional employer organization (PEO)?   |
| 192-300-210 | What requirements apply to professional employer organizations and client employers?                                      |
| 192-300-220 | What unemployment taxes apply to professional employer organizations and client employers?                                |
| 192-300-230 | What enforcement, penalties, and collection procedures apply to professional employer organizations and client employers? |

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

|             |   |
|-------------|---|
| 192-300-050 | What is a predecessor-successor relationship? [Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. 05-19-017, § 192-300-050, filed 9/9/05, effective 10/10/05; 04-23-058, § 192-300-050, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010, 50.12.040. 00-05-068, § 192-300-050, filed 2/15/00, effective 3/17/00.] Repealed by 07-23-131, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. |
|-------------|---|

**WAC 192-300-010 What documentation and liability requirements apply to employer representatives?** (1) In order to represent an employer before the department, a representative from a third party must file with the department a power of attorney in a form acceptable to the department. The department may accept a signed power of attorney form by fax or in other electronic form. The department will send a letter to the employer confirming that the employer has authorized the employer representative to represent it before the department.

(2) The employer remains liable for the payments of any taxes, interest, or penalties due if its third party representative errs in registering, filing reports, or paying unemployment taxes.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-300-010, filed 11/21/07, effective 1/1/08.]

**WAC 192-300-060 What are reimbursable employers?** (1) Some nonprofit organizations, states and political subdivisions of the state, and Indian tribes may qualify under chapters 50.44 and 50.50 RCW as reimbursable employers which reimburse the department for unemployment benefits actually paid to separated employees instead of paying unemployment taxes.

(2) In order to qualify, a nonprofit organization must be a section 501 (c)(3) tax-exempt organization under the federal tax code and must provide the department with a copy of its section 501 (c)(3) letter.

(3) If a new employer chooses and qualifies for the reimbursable method, the department may require it to post a bond or security deposit under RCW 50.44.070. Political subdivisions and nonprofit hospitals, colleges, and universities are not required to post a bond or security deposit. For a new employer, the department will base the amount of any required bond on the projected taxable payroll for the coming

year, multiplied by the industry average tax rate, with the result rounded down.

(4) For an existing reimbursable employer, the department will base the amount of any required bond based on individual wages of each employee for the previous four complete calendar quarters, multiplied by new taxable wage amounts using the maximum taxable wage base assigned for the coming year, with the result rounded down.

(5) If a reimbursable employer switches to the taxable method, the employer will be assigned the industry average rate until it satisfies the requirements to become a "qualified employer" under RCW 50.29.010. This does not apply to delinquent employers under WAC 192-330-110.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-300-060, filed 11/21/07, effective 1/1/08.]

**WAC 192-300-170 Requirements for election of unemployment insurance coverage.** The department applies RCW 50.04.165 and 50.24.160 to establish the election of coverage for unemployment insurance by employers where personal services are not considered employment under the law:

(1) RCW 50.24.160 allows any business to request unemployment insurance coverage for personal services that are not covered as employment:

- (a) The request must be in writing to the department;
- (b) The department must approve the request for election of coverage in writing; and
- (c) The request must be signed by someone legally authorized to bind the business.

(2) All changes in elected coverage remain in effect for at least two calendar years. The business may terminate coverage only at the end of a calendar year. To terminate coverage, the employer must send a written request to the department by January 15.

(3) The department reserves the right to disapprove a request for coverage because:

- (a) The applicant is not liable for federal unemployment taxes (FUTA);
  - (b) The occupation or industry is seasonal; or
  - (c) Other reasons apply.
- (4) The department reserves the right to cancel unemployment insurance coverage for a voluntary election employer because:

- (a) Of nonpayment of unemployment insurance taxes or failure to file an unemployment insurance tax and wage report;
- (b) Of misrepresentation of facts;
- (c) Coverage is not used for involuntary unemployment as outlined in RCW 50.01.010; or
- (d) Other reasons apply.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-300-170, filed 11/21/07, effective 1/1/09; 00-05-064, § 192-300-170, filed 2/15/00, effective 3/17/00.]

**WAC 192-300-180 Joint accounts.** (RCW 50.24.170.)

(1) Any two or more employers may form joint accounts (consolidate) for the purposes of reporting and dealing with the department.

(2) Joint accounts must be acceptable to the department and cannot:

- (a) Impair any obligation by these employers to the department;
- (b) Interfere with the payment of benefits to claimants;
- (c) Increase administrative costs to the department; or
- (d) Allow an employer to receive an experience rate to which it was not entitled.

(3) Joint accounts must provide for the maintenance of all records required under Title 50 RCW.

(4) Joint accounts may not be formed until the department has approved in writing the consolidation plan.

(5) A joint account may not be established for a third-party payer under RCW 50.04.248, a common paymaster under RCW 50.04.065, or a professional employer organization under RCW 50.04.298.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-130, § 192-300-180, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.24.170. 99-20-128, § 192-300-180, filed 10/6/99, effective 11/6/99.]

**WAC 192-300-185 Branch accounts.** The department may establish branch accounts for a single registered employer. All branch accounts shall be consolidated for purposes of establishing a single tax rate for the employer.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-300-185, filed 11/21/07, effective 1/1/08.]

**WAC 192-300-200 What is a professional employer organization (PEO)?** A "professional employer organization," as further defined in RCW 50.04.298(1), is a person or entity that enters into an agreement with one or more client employers to provide professional employer services in a coemployment relationship. The professional employer services may include functions such as human resources, risk management, payroll administration services, or unemployment insurance. Both the professional employer organization and the client employer are considered coemployers.

A "professional employer organization" includes entities that use the term "staff leasing company," "permanent leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer" and provide professional employer services to client employers. It does not include independent contractors under RCW 50.04.140, temporary staffing services companies and services referral agencies under RCW 50.04.245, third-party payers under RCW 50.04.248, labor organizations, or common paymasters or common pay agents under RCW 50.04.065.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-130, § 192-300-200, filed 11/21/07, effective 1/1/08.]

**WAC 192-300-210 What requirements apply to professional employer organizations and client employers?**

(1) Both professional employer organizations and client employers must comply with all applicable state laws. Professional employment agreements may not allocate rights and obligations between professional employer organizations and client employers other than in compliance with state law.

(2) Professional employer organizations must file a master business application with the state. They must register with the department under RCW 50.12.070 and obtain an employer reference number issued by the department (employment security number). This applies to professional

employer organizations that have their own employees in this state and to professional employer organizations that have client employers who do business or have employees in this state.

(3) Professional employer organizations must ensure that their client employers are registered with the department under RCW 50.12.070. Professional employer organizations may only file papers to register the client employer if they also have filed with the department a power of attorney form signed by an authorized representative of the client employer.

(4) In order to represent a client employer to the department, a professional employer organization must file with the department a power of attorney in a form acceptable to the department. The signed power of attorney form may be sent by fax or in other electronic form acceptable to the department. The department will acknowledge receipt of the power of attorney to the sender and will send a letter to the client employer confirming that the professional employer organization is authorized to represent it to the department.

(5)(a) Professional employer organizations shall provide the department with the following information for client employers: Names, addresses, unified business identifier numbers, employment security numbers, names and Social Security numbers of corporate officers, owners and partners (if not a corporation or limited liability company), or limited liability company members, effective date the relationship between the professional employer organization and client employer began, and a business location in Washington state where payroll and business records for the client employer will be made available for review or inspection when requested by the department.

Information is due:

(i) By September 1, 2007, for all then existing client employers;

(ii) Within thirty days for any client employer registering with the department for the first time; and

(iii) Within thirty days of the effective date whenever the professional employer organization and a client employer enter a professional employer agreement.

(b) Professional employer organizations shall notify the department within thirty days of the termination of a relationship with a client employer. The notice shall include the name, address, unified business identifier number, employment security number, effective date, and contact information for the client employer.

(c) The department shall provide forms for the information required in this subsection. The department may require professional employer organizations to submit the information in an electronic format.

(6) Professional employer organizations shall maintain accurate payroll records for each client employer and make them available for review and inspection at a business location in Washington state when requested by the department. The location may vary for different client employers. Appropriate department facilities may be used for this purpose with the consent of the department. The department may require client employers or professional employer organizations to produce other business and financial records at an in-state location in the same manner it requires other employers to do so under WAC 192-310-050.

(7) Professional employer organizations shall file quarterly tax and wage reports for client employers they represent in a format specified by the department. Reports shall contain separate and distinct information for each client employer, regardless of the format used. Professional employer organizations may file a single electronic report for multiple client employers, separate paper or electronic reports for individual client employers, or a combination of electronic and paper filing.

(8) The department shall provide an electronic system for filing quarterly tax and wage reports which allows a professional employer organization to make payments when filing for multiple client employers with a single payment for those employers.

(9) If the professional employer organization files separate quarterly tax and wage reports for individual client employers, it shall make separate payments for each employer.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-130, § 192-300-210, filed 11/21/07, effective 1/1/08.]

**WAC 192-300-220 What unemployment taxes apply to professional employer organizations and client employers?** (1) Effective January 1, 2008, each professional employer organization and each client employer shall be assigned an individual tax rate based on its own experience.

(2)(a) This subsection applies to professional employer organizations and client employers which have a coemployment relationship as of January 1, 2008.

(b) Except as provided in (d) and (e) of this subsection, the tax rate for professional employer organizations and client employers shall be determined on the basis that the client employer transferred from the professional employer organization effective January 1, 2008. A client employer's proportionate experience (benefits charged and taxable payroll) for the entire first quarter beginning January 1, 2008, shall transfer to the client employer. On or after January 1, 2008, experience shall transfer to a client employer regardless of whether the professional employer organization was the base year employer prior to that date.

(c) The client employer's tax rate shall remain unchanged for the remainder of the rate year in which the transfer occurred.

(d) Client employers that are qualified employers under RCW 50.29.010 or are delinquent under RCW 50.29.025 (2)(c)(i) and that joined a professional employment organization after the computation date of July 1, 2007, shall be assigned their own tax rate for 2008 as if they had not joined the professional employer organization. Any experience from July 1, 2007, to December 31, 2007, assigned to the professional employer organization for those client employers shall transfer to the client employer for purposes of setting future rates.

(e) If an employer is registered with the department and has its own tax rate, but is also a client employer for purposes of some of its employees, it shall keep its own tax rate for 2008 and that rate shall apply to all its employees. Any employees of a client employer that is in a coemployment relationship with a professional employer organization shall be considered a branch account under the registered employer.



(f) Beginning on January 1 of the year after the transfer, the client employer's tax rate for each rate year shall be based on a combination of:

(i) The client employer's experience with payrolls and benefits; and

(ii) The experience assigned to the professional employer organization which is attributable to the client employer, based on the percentage of employees transferred as of January 1, 2008, regardless of the date the client employer joined the professional employer organization.

(g)(i) The professional employer organization's tax rate on any payroll retained by the professional employer organization shall remain unchanged for the remainder of the year in which the transfer occurs.

(ii) Beginning on January 1 of the year after the transfer, the professional employer organization's tax rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience that has been attributed to client employers.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-130, § 192-300-220, filed 11/21/07, effective 1/1/08.]

**WAC 192-300-230 What enforcement, penalties, and collection procedures apply to professional employer organizations and client employers?** (1) A professional employer organization may collect and make payments on behalf of a client employer, but the client employer remains liable for the payments of any taxes, interest, or penalties due.

(2) Unless the professional employer organization has already notified the department that it has not received payments from the client employer, the department shall first attempt to collect any payments due from the professional employer organization and shall not attempt to collect from the client employer until at least ten days from the date payment was due. Collection procedures shall follow the requirements of chapter 50.24 RCW.

(3) A professional employer organization may elect to provide a bond to cover payments due. Any bond for this purpose shall be filed with the department, shall be in a form satisfactory to the commissioner, and shall be in an amount not less than the amount of contributions due in the highest quarter of the preceding calendar year. A bond does not relieve the professional employer organization or its client employers of ultimate liability for payments due.

(4) In case of error by a professional employer organization in which reports are incomplete, inaccurate, or late, or if the professional employer organization makes a single payment that does not match the amount due for multiple employers, the department will initially apply any penalty and interest charges for all amounts due against the professional employer organization, regardless of whether the professional employer organization has employees in Washington. However, the client employer ultimately remains liable for any taxes, penalties, or interest due.

All client employers of a professional employer organization may be subject to the tax rate for delinquent taxpayers if a delinquency under WAC 192-320-035 cannot be assigned to a specific client employer.

(5) If a professional employer organization reports employees of a client employer as its own employees, a first

violation will be considered an incorrect report for the professional employer organization and an untimely report for the client employer under RCW 50.12.220(2). A second violation will be considered knowing misrepresentation under RCW 50.12.220(3). A third violation will be considered grounds for revocation of the authority of a professional employer organization to act on behalf of its client employers.

(6) The department may revoke the authority of a professional employer organization to act on behalf of its client employers if the professional employer organization substantially fails to comply with the provisions of RCW 50.12.300. An order to revoke the authority of a professional employer organization shall be considered an appealable order under chapter 34.05 RCW comparable to an order and notice of assessment under RCW 50.32.030.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-130, § 192-300-230, filed 11/21/07, effective 1/1/08.]

## Chapter 192-310 WAC REPORTING OF WAGES AND TAXES DUE

### WAC

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**WAC 192-310-010 What reports are required from an employer? (RCW 50.12.070.)** (1) **Master business application.**

Every person or unit with one or more individuals performing services for it in the state of Washington must file a master business application with the department of licensing.

### (2) **Employer registration:**

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses of owners and

owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

### (3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card

itself. An employer should keep copies of the document(s) for his or her records; and

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030).

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using the current version of *UIFastTax*, *UIWebTax*, or *ICESA* Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-010, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.-010, 50.12.040, and 50.12.042. 05-19-017, § 192-310-010, filed 9/9/05, effective 10/10/05; 04-23-058, § 192-310-010, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.070. 98-14-068, § 192-310-010, filed 6/30/98, effective 7/31/98.]

### **WAC 192-310-020 Tax payments by employers (RCW 50.24.010).**

(1) Taxes must be paid each quarter. Each quarterly payment must include the taxes owed on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which taxes are due. Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the tax payment must be received or postmarked on the next business day.

(2) Tax payments are due immediately when an employer goes out of business or the account is closed by the department. Taxes not paid immediately are delinquent. However, interest will not be added until the first day of the second month following the end of the calendar quarter for which the taxes are owed.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-020, filed 11/21/07, effective 1/1/08; 07-22-055, § 192-310-020, filed 11/1/07, effective 12/2/07; 98-14-068, § 192-310-020, filed 6/30/98, effective 7/31/98.]

**WAC 192-310-030 What are the report and tax payment penalties? (RCW 50.12.220.)** (1) **Penalty for late tax reports.** An employer who does not file a tax report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax report.** An employer must file a tax report that is complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

- (i) The entire wage report is not filed on time; or
- (ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported; or
- (iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

- (i) One employee and reports incomplete wage elements for the one employee; or
- (ii) Two to nineteen employees and reports incomplete wage elements for two or more employees; or
- (iii) Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or
- (iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of \$250.00, but not less than:

- |       |                                |          |
|-------|--------------------------------|----------|
| (i)   | 2nd occurrence                 | \$75.00  |
| (ii)  | 3rd occurrence                 | \$150.00 |
| (iii) | 4th and subsequent occurrences | \$250.00 |

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

- |       |                                |          |
|-------|--------------------------------|----------|
| (i)   | 2nd occurrence                 | \$75.00  |
| (ii)  | 3rd occurrence                 | \$150.00 |
| (iii) | 4th and subsequent occurrences | \$250.00 |

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ten percent of total taxes due or \$10.00, whichever is greater.

(6) **Waivers of late filing and late payment penalties.** The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; or

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules; and

(c) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

**(7) Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format when the employer can demonstrate that the incomplete or incorrectly formatted report was not due to the fault of the employer.

**(8) Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

**(9) Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

**(10) Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's

debt. The amount of the deposit must be approved by the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-030, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. 05-19-017, § 192-310-030, filed 9/9/05, effective 10/10/05; 04-23-058, § 192-310-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040. 98-14-068, § 192-310-030, filed 6/30/98, effective 7/31/98.]

**WAC 192-310-035 Employer reports—Failure to report or incorrectly reporting hours or wages.** (1) If an employer does not report hours worked and a former employee applies for benefits, the department will divide the wages earned by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked.

(2) If the employer later provides the actual hours worked, the department will recalculate the former employee's claim.

(3) If the claim is voided or benefits are reduced as a result of the recalculation, the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-035, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 49.46.020. 99-20-134, § 192-310-035, filed 10/6/99, effective 11/6/99.]

**WAC 192-310-040 Employer reports—Further defining hours worked (RCW 50.12.070).** This section defines the hours that employers must include on the quarterly tax and wage report.

(1) **Vacation pay.** Report the number of hours an employee is on paid leave. Do not report payments made in place of vacation time as hours worked.

(2) **Sick leave pay.** As provided in RCW 50.04.330(1), any payments made to an employee under a qualified plan for sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered wages or compensation. Do not report these as hours or wages. For payments under a nonqualified plan, report both wages and hours.

(3) **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned or piecework employees.** Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee for forty hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, report the actual number of hours for which they were paid. Wages in lieu of notice of termination pays the employee whose services have been terminated by the employer for the amount of wages they would have earned during the notice period.

(6) **Employees on salary.** If a salaried employee works other than the regular forty-hour week, report the actual num-

ber of hours worked. If there are no reliable time keeping records, report forty hours for each week in which a full-time salaried employee worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least fifteen classroom or laboratory hours to be considered full-time. A teaching load of less than fifteen hours of instruction is considered part-time.

(a) If there is no reliable hourly information, report the hours of instruction as part-time based on fifteen credits as a full-time teaching load and thirty-five hours as full-time employment for a week. For example, an instructor teaches twelve credits per week. Twelve divided by fifteen equals eighty percent. Thirty-five hours times eighty percent equals twenty-eight hours. The employer should report the twenty-eight hours to the department on the employer's quarterly tax and wage report.

(b) Any part-time salaried instructor who does not establish a valid claim because of this formula may provide the department with evidence of hours worked that exceeds the hours reported by the employer.

(8) **Severance pay.** Do not report additional hours for severance pay. Report only the dollar amount paid to the employee. Severance pay is taxable because it is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** Report the actual hours worked for performing services which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** Do not report additional hours for bonuses, tips or other gratuities if they are received by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number.

(12) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-040, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05 and 50.12 RCW, RCW 50.12.070 and 50.04.330(1). 99-20-141, § 192-310-040, filed 10/6/99, effective 11/6/99.]

**WAC 192-310-055 Employer records—Farm operator or farm labor contractor—RCW 50.12.070.** Every employer is required to keep true and accurate employment records.

(1) Farm operators and farm labor contractors must keep the records required under WAC 192-310-050.

(2) Farm operators who contract with a crew leader or a farm labor contractor must keep original records containing the following information:

- (a) The beginning and ending dates of the contract;
- (b) The types of services performed;
- (c) The number of persons performing such services;
- (d) The name of the contractor or crew leader; and

(e) Evidence the farm labor contractor is licensed as required by chapter 19.30 RCW.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-310-055, filed 11/1/07, effective 12/2/07. Statutory Authority: Chapters 34.05 and 50.12 RCW. 00-01-166, § 192-310-055, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-050 (part).]

**WAC 192-310-060 Tips as wages.** "Tips as wages" are those tips an employee is required to report to the employer by federal law.

(1) The employer must report tips each quarter on an "as paid" basis. Tips are considered paid when the employee reports them to the employer for federal income tax purposes; or when they are distributed by the employer to the employee.

(2) Tips will not be treated as wages when an individual's benefits are calculated if the individual did not report their value to the employer.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-310-060, filed 11/1/07, effective 12/2/07. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.320. 99-20-129, § 192-310-060, filed 10/6/99, effective 11/6/99.]

**WAC 192-310-070 Value of meals, lodging and in kind compensation—Payment by means other than cash—RCW 50.04.320.** (1) The employer should not report the value of meals or lodging provided to an employee for the convenience of the employer unless the value equals twenty-five percent or more of the employee's total pay during a pay period. Meals or lodging provided on the employer's premises or as a condition of employment will be considered as provided for the convenience of the employer.

(2) Compensation for personal services paid in kind (in any form other than cash), will be given its current prevailing market value. This value will be treated as wages in computing the unemployment insurance taxes that are due. If the value of an item is set by a hiring contract, the department will treat the value set by the contract as the actual value.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-310-070, filed 11/1/07, effective 12/2/07. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.320. 99-20-130, § 192-310-070, filed 10/6/99, effective 11/6/99.]

**WAC 192-310-080 When are performers in small performing arts industries who receive stipends not considered to be in employment? (RCW 50.04.275.)** (1) A person who is participating in a performance for an employer in subsection (2) of this section is not considered to be in employment if the person receives no remuneration other than a nominal stipend.

(2) This section only applies to employers that are classified in the North American industry classification system as theater companies, dinner theaters, dance companies, musical groups and musical artists, and museums. The employer may not employ more than three individuals during any portion of a day during a calendar year. If an organization employs no more than three individuals who regularly exceed half-time employment, it will be presumed to meet this test.

If an employer becomes ineligible during the course of a year, the employer must from that time forward until the end of the calendar year treat persons who receive only a nominal stipend as in employment.

(3) As used in this section, "participating in a performance" includes serving as an actor or actress, musician, lighting technician, costume designer, stagehand, or in performing other functions relating specifically to the performance.

(4) A stipend is nominal when it is a fixed sum of money which the employer pays periodically to defray incidental expenses involved in participating in a performance and which does not exceed the amount specified under WAC 192-100-500(5).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-080, filed 11/21/07, effective 1/1/08.]

**WAC 192-310-090 When is "casual labor" exempt from unemployment insurance? (RCW 50.04.270.)** "Casual labor" that is not in the course of the employer's trade or business and does not promote or advance the employer's trade or business is not considered employment. This exemption only applies to services such as yard work or minor repair work which is performed for a private individual on nonbusiness property. Any employment which is treated as a business expense does not qualify for this exemption.

"Domestic service" is considered a separate exemption under RCW 50.05.160.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-090, filed 11/21/07, effective 1/1/08.]

**WAC 192-310-095 When are musicians and entertainers exempt from unemployment insurance? (RCW 50.04.148.)** Musicians or entertainers who contract to perform specific engagements with a purchaser are not considered in employment when they provide no other duties for the purchaser and are not regularly and continuously employed by the purchaser. This exemption only applies if the primary business purpose of the purchaser is not music or entertainment. The music or entertainment provided must be incidental to the primary business activity of the purchaser. An example would be a tavern that periodically contracts with different bands to play live music.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-095, filed 11/21/07, effective 1/1/08.]

**WAC 192-310-100 What notices does the department require or recommend employers to post? (Relating to RCW 50.20.140, 50.12.290, and 50.44.045.)**

(1) Employers who are responsible for unemployment insurance coverage of their employees must post and maintain printed notices to individuals who are employed by the employer. The notices provide information to individuals who may be unemployed about how to apply for benefits. The notices are to be posted in conspicuous places close to the actual location where the personal services are performed.

(2) The department will provide required notices to employers without charge. The department will send required notices to employers when they file a master application for a business license registering for unemployment insurance. The department will send updated notices to employers when there are substantive changes in the information.

(3) The department may also make recommendations of additional materials to post.

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(4) A church, a convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches shall display in a conspicuous place a poster giving notice that its employees are not considered in employment for purposes of unemployment insurance. The department shall make these posters available without charge.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-100, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.20.140. 99-20-133, § 192-310-100, filed 10/6/99, effective 11/6/99.]

**WAC 192-310-150 Are corporate officers covered for unemployment insurance? (1)** For purposes of WAC 192-310-150 through 192-310-190:

(a) "Bona fide officer" means any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of a corporate officer;

(b) "Corporate officer" means an officer of a corporation as described or authorized in bylaws under RCW 23B.08.-400;

(c) "Exercise substantial control in the daily management of the corporation" means that the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

(d) "Nonpublic company" means a corporation that does not meet the definition of a public company;

(e) "Public company" means a corporation that has a class of shares registered with the Federal Securities and Exchange Commission as defined in RCW 23B.01.400;

(f) "Related by blood within the third degree" means the degree of kinship as computed according to the rules of the civil law. For example, if measured for descendants, it would include a person and that person's children, grandchildren, great grandchildren, brothers and sisters, and nephews and nieces. Alternatively, if measured for ancestors, it would include a person and that person's parents, grandparents, great grandparents, brothers and sisters, and aunts and uncles. Cousins are not related by blood within the third degree under the rules of the civil law and are not included. Legal adoptions or step-relatives are considered as if genetically related.

(g) "Related by marriage" means the union subject to legal recognition under the domestic relations laws of this state.

(2) Unless specifically exempted under WAC 192-310-160 or 192-310-180, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance to the same extent other employment is covered.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-150, filed 11/21/07, effective 1/1/09.]

**WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage? (1)** Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate

officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made when the corporation first registers with the department as an employer under RCW 50.12.070. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-160, filed 11/21/07, effective 1/1/09.]

**WAC 192-310-170 How is unemployment insurance coverage of corporate officers reinstated? (1) Unemploy-**

ment insurance coverage of corporate officers who have been exempted from coverage may be reinstated under subsection (2) of this section by termination of an exemption or under subsection (3) of this section by election of the corporation.

(2)(a) An exemption for a corporate officer of a public corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(3) terminates immediately if the officer no longer qualifies for the exemption. For example, the worker may no longer be a bona fide elected or appointed corporate officer, may no longer be a shareholder of the corporation, may no longer exercise substantial control in the daily management of the corporation, or now has primary responsibilities which include the performance of manual labor.

(b) An exemption for a corporate officer of a nonpublic corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(4) terminates immediately if the officer no longer qualifies for the exemption for reasons other than revocation of a voluntary agreement to be exempted from coverage. For example, the worker may no longer be a bona fide elected or appointed corporate officer or may no longer exercise substantial control in the daily management of the corporation. However, the exemption does not terminate solely because the officer withdraws a voluntary agreement to be exempted from coverage.

(c) An exemption for a corporate officer of a nonpublic corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(5) terminates immediately if the officer no longer qualifies for the exemption because of a change in family relationship, such as a change in marital status. The exemption for all other corporate officers also terminates immediately if the entire group of corporate officers no longer qualifies under WAC 192-310-160(5), except to the extent some or all may remain exempt under WAC 192-310-160(4).

(d) A corporation must notify the department on a form approved by the department of a change in status in which an exemption terminates for a corporate officer who had been exempted. The notice is due by the time the next quarterly tax and wage report is due from the corporation. In addition, a corporate officer may notify the department that the exemption has terminated.

(e) A corporation is responsible for any taxes, penalties, and interest due if an exemption terminates and coverage is reinstated, regardless of whether the corporation provided notice to the department of the termination of the exemption.

(3) A corporation that has exempted one or more corporate officers may elect to reinstate coverage for one or more of those previously exempted corporate officers only under the following conditions:

(a) The window of opportunity to reinstate coverage only exists every five years, beginning in 2014. Corporations may reinstate coverage in calendar years 2014, 2019, and every five years thereafter.

(b) Reinstatement is only effective on January 1, 2014, January 1, 2019, and every five years thereafter. The corporation must send written notice to the department by January 15 for the reinstatement to be effective on January 1 of that year. If written notice is sent after January 15, reinstatement will not be allowed until the next window of opportunity five years thereafter. Reinstatement will not be applied retroac-

tively, except for the period from January 1 to January 15 if notice is sent by January 15.

(c) Coverage will not be reinstated if the corporation committed fraud related to the payment of contributions within the previous five years, is delinquent in the payment of taxes at the time of the request to reinstate corporate officers, is currently assigned a tax rate for employers who are delinquent on taxes under WAC 192-320-035, or if the commissioner exercises his or her discretion to determine that there are related reasons why the corporation should not be allowed to reinstate coverage of corporate officers.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-170, filed 11/21/07, effective 1/1/09.]

**WAC 192-310-180 Are corporate officers covered for unemployment insurance when the corporation has no other employees?** (1) If a corporation has no employees and all personal services are performed only by bona fide corporate officers, the corporation is not considered an "employer" or "employing unit" under RCW 50.04.080 and 50.04.090. Services of these corporate officers are not considered "services in employment" under RCW 50.04.165 or WAC 192-310-150 and are not covered for purposes of unemployment insurance unless they specifically elect coverage under subsection (2) of this section.

(2) A corporation that has no employees and in which all personal services are performed only by bona fide corporate officers may elect unemployment insurance coverage if it registers with the department under RCW 50.12.070, elects coverage under RCW 50.24.160, and complies with WAC 192-300-170. The election must cover at least two calendar years and is only effective upon the written approval of the commissioner. Once the election for coverage is approved, it may only be terminated effective January 1 after at least two calendar years and only if the corporation filed a written application for termination of coverage by January 15 of that year.

(3) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-180, filed 11/21/07, effective 1/1/08.]

**WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed?** (1) This section applies to:

(a) A corporate officer who owns ten percent or more of the outstanding stock of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the outstanding stock of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage as parent, stepparent, grandparent, spouse, child, brother, sister, stepchild, adopted child, or grandchild.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer perma-

nently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership of the percentage of stock increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-190, filed 11/21/07, effective 1/1/08.]

## Chapter 192-320 WAC

### EXPERIENCE RATING AND BENEFIT CHARGING

#### WAC

|             |  |
|-------------|--|
| 192-320-020 | How is the industry average calculated for rate years 2005, 2006, and 2007? (RCW 50.29.025.)             |
| 192-320-025 | How are unemployment insurance tax rates determined for new employers? (RCW 50.29.025.)                  |
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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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|-------------|--|
| 192-320-050 | What are the requirements of partial successors under chapter 50.29 RCW? [Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. 05-19-017, § 192-320-050, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 50.12.010, 50.12.040. 00-05-068, § 192-320-050, filed 2/15/00, effective 3/17/00.] Repealed by 07-23-131, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. |
| 192-320-051 | What are the requirements of partial predecessors under chapter 50.29 RCW? [Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. 05-19-017, § 192-320-051, filed 9/9/05, effective 10/10/05.] Repealed by 07-23-131, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064.  |
| 192-320-055 | Predecessor-successor transfers through intermediaries. [Statutory Authority: Chapters 34.05, 50.12 RCW, RCW 50.04.320 and 50.29.062. 99-20-131, § 192-320-055, filed 10/6/99, effective 11/6/99.] Repealed by 07-23-131, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064.  |

**WAC 192-320-020 How is the industry average calculated for rate years 2005, 2006, and 2007? (RCW 50.29.025.)** (1) As used in this title:

(a) "NAICS" is an abbreviation for North American Industry Classification System;

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. It will be referred to as the "experience tax."



(c) "Industry average graduated social cost factor rate" is the average social tax rate for a particular industry. It will be referred to as the "social tax."

(2) When calculating the experience tax and social tax, the department will use the first four digits of the NAICS code of the industry being calculated.

**(3) Experience tax.**

(a) The department will calculate the experience tax as follows:

(i) A table will be prepared that contains each of the 40 rate classes;

(ii) For each rate class, we will multiply, total, and display the taxable payrolls for all qualified employers assigned to that rate class with the NAICS code being calculated, by the percentage assigned to that rate class;

(iii) We will total the tax rates for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) We will add fifteen percent to the result, and show the final amount as a percentage rounded to two decimal places.

(b) The experience tax must be at least 1.00 percent and not more than 5.4 percent.

**(4) Social tax.**

(a) The department will calculate the social tax as follows:

(i) The experience tax table will show the percentage of the social tax assigned to each of the 40 rate classes;

(ii) We will multiply, total, and display the total payroll in each industry rate class by the percentage of social tax assigned to that rate class;

(iii) We will total the social tax rate for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) We will add fifteen percent to the result, and show the final amount as a percentage rounded to two decimal places.

(b) The social tax for an industry cannot be higher than the percentage of social tax assigned to rate class 40.

(5) If there are no qualified employers in the four digit level of the NAICS code, we will calculate the rates using the corresponding three digit level and assign the result to the four digit level. If there are no qualified employers in the three digit level, we will calculate the rates using the corresponding two digit level and assign the result to both the three and four digit levels.

(6) This section applies to rate years 2005, 2006, and 2007.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-320-020, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. 05-19-017, § 192-320-020, filed 9/9/05, effective 10/10/05.]

**WAC 192-320-025 How are unemployment insurance tax rates determined for new employers? (RCW 50.29.025.)** (1) Beginning in rate year 2008, unemployment insurance tax rates for new employers shall be based on the history factor of new employers over the last three fiscal years applied to the experience tax and the social cost factor tax for each industry. The history factor shall be ninety percent, one hundred percent, or one hundred fifteen percent,

based on the experience of new employers over the last three years, and shall be calculated under RCW 50.29.025.

(2) As used in this section:

(a) "NAICS" is an abbreviation for North American Industry Classification System;

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "experience tax."

(c) "Industry average social cost factor rate" means the average social tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "social cost factor tax."

(d) "History factor" shall be ninety percent, one hundred percent, or one hundred fifteen percent, depending on the ratio of benefits charged and contributions paid in the last three fiscal years by employers who were not considered a "qualified employer" under WAC 192-320-030 or were not delinquent on taxes under WAC 192-320-035. It shall be computed annually and is not limited to a particular industry.

(3) When calculating the experience tax and social cost factor tax, the department will use the first four digits of the NAICS code of the industry being calculated.

(4) Experience tax.

(a) The department will calculate the experience tax as follows:

(i) A table will be prepared that contains each of the forty rate classes;

(ii) For each rate class, the department will multiply, total, and display the taxable payrolls for all qualified employers assigned to that rate class with the NAICS code being calculated, by the percentage assigned to that rate class;

(iii) The department will total the tax rates for the forty industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

(b) The experience tax must be at least 1.00 percent and not more than 5.4 percent.

(5) Social cost factor tax.

(a) The department will calculate the social cost factor tax as follows:

(i) The experience tax table will show the percentage of the social cost factor tax assigned to each of the forty rate classes;

(ii) The department will multiply, total, and display the total payroll in each industry rate class by the percentage of social cost factor tax assigned to that rate class;

(iii) The department will total the social cost factor tax rate for the forty industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

(b) The social cost factor tax for an industry cannot be higher than the percentage of social cost factor tax assigned to rate class forty.

(6) If there are no qualified employers in the four-digit level of the NAICS code, the department will calculate the rates using the corresponding three-digit level and assign the

result to the four-digit level. If there are no qualified employers in the three-digit level, the department will calculate the rates using the corresponding two-digit level and assign the result to both the three-digit and four-digit levels.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-320-025, filed 11/21/07, effective 1/1/08.]

**WAC 192-320-030 How are unemployment insurance tax rates determined for a current "qualified employer"?** (1) A "qualified employer" means an employer who:

(a) Reported some employment in the twelve-month period beginning with April 1 of the second year preceding the computation date;

(b) Had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the July 1 computation date; and

(c) Was not delinquent on taxes under WAC 192-320-035.

(2) Unemployment insurance tax rates for a "qualified employer" are determined under RCW 50.29.025.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-320-030, filed 11/21/07, effective 1/1/08.]

**WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes?** (1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1.

(3) This section does not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if the otherwise qualified domestic employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable.

(4) The department shall provide notice to the employer that he or she may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert in July, August, or September billing statements or in a notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately

revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-320-035, filed 11/21/07, effective 1/1/08.]

**WAC 192-320-040 When will the department recalculate employer tax rates? (RCW 50.29.080.)** (1) The department may, at its discretion, recalculate the tax rate for any employer if it determines, within three years of the July 1 computation date, that the rate as originally computed was erroneous.

(2) Except as provided in subsection (1) of this section, an employer must submit a written request for rate review or recalculation before the department will recalculate a rate. This does not apply if the department determines that the department's error caused an incorrect tax rate.

(3) The department will not recalculate a tax rate at the request of the employer more than once in a calendar year.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-320-040, filed 11/21/07, effective 1/1/08.]

**WAC 192-320-070 Conditions for relief of benefit charges due to a voluntary quit.** (1) A contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.021(3), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065.

(2) **Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same; or the job location may have changed but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and

(i) Domestic violence which causes the claimant reasonably to believe that continued employment would jeopardize the safety of the claimant or any member of the claimant's immediate family.

(3) **Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

(a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;

(b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer and the employer has failed to correct the hazards within a reasonable period of time;

(c) Employee skills no longer required for the job;

(d) Unreasonable hardship on the health or morals of the employee;

(e) Reductions in hours;

(f) Reduction in pay;

(g) Notification of impending layoff; and

(h) Other work-related factors the commissioner considers pertinent.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-320-070, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 04-23-058, § 192-320-070, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010, 50.12.040. 00-05-069, § 192-320-070, filed 2/15/00, effective 3/17/00.]

**WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 (2)(c) and 50.29.021 (3)(a).** (1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection (2).

(2) This section does not apply to the entities listed below. The department will charge only for the percentage of benefits that represent their percentage of base period wages. These include wages earned:

(a) In another state;

(b) From a local government employer;

(c) From the federal government; or

(d) From any branch of the United States military.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 07-23-128, § 192-320-080, filed 11/21/07, effective 1/1/08.]

## Chapter 192-330 WAC COLLECTIONS AND REFUNDS

### WAC

192-330-100 Adjustments and refunds—Reduction of refund if wages reported in error—RCW 50.24.150.

**WAC 192-330-100 Adjustments and refunds—Reduction of refund if wages reported in error—RCW**

**50.24.150.** (1) An employer may file a written request for refund of, or adjustment to, incorrectly paid taxes, interest, or penalties within three years of the date they were paid. The commissioner may also make adjustments for incorrectly paid taxes, interest, or penalties within three years of the date they were paid using his/her own initiative.

(2) When the wages of an employee have been reported in error and the department has paid a claimant benefits based on those wages, any request for refund of the tax will be offset by the amount of benefits paid. If there is any refund of taxes due the employer, it will be reduced by the amount of benefits paid against the claim(s) and any associated wages.

(3) Refunds will not usually be issued to an ongoing, active business when the credit can be applied to subsequent quarterly reports. Refunds will be allowed for:

(a) Accounts that are no longer active;

(b) Duplicate payments of one thousand dollars or more;

(c) Cases where the business can prove financial hardship from lack of a refund;

(d) The incorrect payment is due to agency error; or

(e) Other incorrect payments of one hundred dollars or more, at the discretion of the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-330-100, filed 11/21/07, effective 1/1/08; 00-05-066, § 192-330-100, filed 2/15/00, effective 3/17/00.]

## Chapter 192-340 WAC AUDITS AND TECHNICAL ASSISTANCE

### WAC

192-340-010

Field audit expansion.

192-340-020

How may auditors determine payroll and wage information which the employer fails to provide?

**WAC 192-340-010 Field audit expansion.** The department's audit expansion requirements are as follows:

(1) If underreported or overreported wages for employees are discovered for the year being audited, the department may expand the audit to prior years within the limits of RCW 50.24.190 and to subsequent years up to the most recently completed calendar quarters where the tax and wages are reported.

(2) In the post-audit interview, it is the responsibility of the department to ensure that audit findings or exceptions are discussed and future reporting requirements are understood by the business being audited.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-340-010, filed 11/21/07, effective 1/1/08; 00-05-065, § 192-340-010, filed 2/15/00, effective 3/17/00.]

**WAC 192-340-020 How may auditors determine payroll and wage information which the employer fails to provide?** If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may use RCW 50.12.080 to determine payroll and wage information based on information otherwise available to the department. This may include information from labor market and economic analysis, information provided to other state or local agencies, and the best information otherwise available to the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-340-020, filed 11/21/07, effective 1/1/08.]

**Chapter 192-350 WAC**  
**TRANSFER OF BUSINESS**

**WAC**

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**WAC 192-350-010 What is a predecessor-successor relationship?** (1) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(2) A predecessor-successor relationship exists when a transfer occurs and one business (successor) acquires all or part of another business (predecessor). It may arise from the transfer of operating assets, including but not limited to the transfer of one or more employees from a predecessor to a successor. It may also arise from an internal reorganization of affiliated companies. Whether or not a predecessor-successor relationship (including a "partial successor" relationship) exists depends on the totality of the circumstances.

(3) **Predecessor.** An employer may be a "predecessor" if, during any calendar year, it transfers any of the following to another individual or organization:

- (a) All or part of its operating assets as defined in subsection (5) of this section; or
- (b) A separate unit or branch of its trade or business.

(4) **Successor.** An employer may be a "successor" if, during any calendar year, it acquires substantially all of a predecessor employer's operating assets. It may be a "partial successor" if, during any calendar year, it acquires:

- (a) Part of a predecessor employer's operating assets; or
- (b) A separate unit or branch of a predecessor employer's trade or business.

(5) **Operating assets.** "Operating assets" include the resources used in the normal course of business to produce operating income. They may include resources that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. "Goodwill" includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

(6) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (9) of this section.

(7) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that resulted from acquiring or reorganizing the business, beginning when the acquisition started and ending when the primary unit is transferred.

(8) **Factors.** No single factor is necessarily conclusive, but some of the factors which the department may consider as favoring establishment of a predecessor-successor (including a "partial successor") relationship are:

(a) Whether the employers are in the same or a like business (e.g., providing similar or comparable goods or services or serving the same market);

(b) Whether the asset(s) transferred constitute a substantial or key portion of similar assets for either the predecessor or successor;

(c) Whether the assets were transferred directly and not through an independent third party;

(d) Whether multiple types of assets (e.g., employees, real property, equipment, goodwill) transferred;

(e) Whether a significant number or significant group of employees transferred between employers;

(f) Whether the assets transferred at the same time or in a connected sequence, as opposed to several independent transfers;

(g) Whether the business name of the first employer continued or was used in some way by the second employer;

(h) Whether the second employer retained or attempted to retain customers of the first employer;

(i) Whether there was relative continuity and not a significant lapse in time between the operations of the first and second employers;

(j) Whether there was continuity of management between employers;

(k) Whether the employers shared one or more of the same or related owners;

(l) Whether documents, such as a contract or corporate minutes, show the sale or transfer of a business or a portion of a business; and

(m) Whether other factors indicate that a predecessor-successor relationship exists.

(9) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by the predecessor, successor, or a combination of both.

(10) **Burden of proof.** The department has the burden to prove by a preponderance of the evidence that a business is the successor or partial successor to a predecessor business. However, if a business fails to respond to requests for information necessary to determine a predecessor-successor relationship, the department may meet its burden by applying RCW 50.12.080 to determine the necessary facts.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-010, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-020 What are examples of when a predecessor-successor relationship exists?** The following examples are intended to illustrate factors that the department may consider in determining whether or not a predecessor-successor relationship exists.

(1) Business A, a sole proprietor widget manufacturer, sells its operations to new business B, a corporation. B plans to continue in the same type of widget manufacturing business as A. The sale includes the name of the business, goodwill, existing inventory, manufacturing equipment, and an ongoing lease. All employees of A transfer to B. This is a predecessor-successor relationship.

(2) Business A, a sole proprietorship retailer, goes out of business. It decides to sell some of its assets, including a company car. Business B, a retailer in a different business, decides to buy the car. It does not acquire any other assets, including employees, from A. Even though B has acquired an asset from A, there is no predecessor-successor relationship because the only relationship is a single asset which is incidental to the primary business of the employers.

(3) Business A and business B are independent corporations, but subdivisions of another entity C. C reorganizes and decides to eliminate A, lay off some employees, and transfer the remaining employees to B. B is the successor to A.

(4) Business A, a small sole proprietorship taxicab company, sells its one taxicab to business B, a much larger taxicab company. No employees transfer, but B tries to retain as much of A's customer base as possible. B is in the same business as A and is in a predecessor-successor relationship.

(5) Business A, a large taxicab company, sells one of its many taxicabs to business B, a small sole proprietorship taxicab company. No employees transfer, but B tries to retain as much of A's customer base as possible. B is in the same business as A and has acquired part of a predecessor employer's operating assets, so B is a partial successor.

(6) Business A, a sit-down restaurant for families which operates in a leased facility, closes. A month later business B, a family restaurant operating under a different name and under a new lease reopens in the same location. One of five servers laid off when business A closed is rehired by business B. If this is the full extent of the relationship between business A and business B, this is not a predecessor-successor relationship. Examples of some of the factors which might change this to a predecessor-successor relationship are: If business B shares some of the same ownership with business A; the extent to which they advertise the same, use the same suppliers, maintain the same restaurant motif and decor, or use the same menu; the extent to which they use the same equipment and dishes; the extent to which the terms of the new lease appear to continue the previous one; and the extent to which other key employees continue from one employer to the other.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-020, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-030 Predecessor-successor transfers through intermediaries.** When operating assets are transferred from one employer to another by using an intermediary whose role is to arrange or assist the transfer process (RCW 50.04.320 and 50.29.062), the department will decide on a case-by-case basis whether a predecessor-successor relationship exists.

The fact that an intermediary was used does not preclude the existence of a predecessor-successor relationship.

In determining if a predecessor-successor relationship exists, the department will consider the intent of the parties involved and the economic reality of the transactions, as opposed to the strict legal format of the multiple transfers.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-030, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-040 What notice must a predecessor or partial predecessor provide to the department?** (1) A predecessor or partial predecessor that quits or disposes of a business is liable for unemployment taxes under RCW 50.24.210. The predecessor or partial predecessor may give notice through the master business license; otherwise, it shall notify the department in writing within thirty days. The notice shall include the predecessor's or partial predecessor's department registration number and the name and contact information for the successor. All unemployment taxes payable are due immediately and shall be paid within ten days.

(2) A partial predecessor that does not quit or dispose of a business shall give written notice to the department within thirty days. The notice shall include the predecessor's or partial predecessor's department registration number and the name and contact information for the successor.

(3) In addition, a predecessor or partial predecessor shall provide the department with requested information about the transfer under WAC 192-350-060.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-040, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-050 What notice must a successor or partial successor provide to the department?** (1) A successor or partial successor may be liable for unemployment taxes under RCW 50.24.210.

(2) A successor or partial successor may notify the department through the master business application that it bought, leased, or acquired all or part of an existing business. Otherwise, a successor or partial successor shall notify the department in writing within thirty days. The notice shall include the successor's or partial successor's department registration number and the name of the predecessor.

(3) In addition, a successor or partial successor shall provide the department with requested information about the transfer under WAC 192-350-060.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-050, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-060 What are the consequences if the predecessor or successor employer fails to respond to requests for information?** (1) The department may send a letter to a predecessor or successor employer to determine a partial transfer of experience. A partial successor or predecessor employer must respond to the letter within thirty days of the mailing date. The response must show the percentage of operating assets transferred to the partial successor. Operating assets include the employees of the business.

(2) If the employer does not respond, the department may apply RCW 50.12.080 to determine necessary facts. In

addition, for subsequent rate years the commissioner may estimate the percentage of operating assets transferred based on the best available information, which may include employment reports filed. That percentage will transfer to the successor until it provides compelling evidence to change the estimate. Any change in the estimate will be prospective only.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-060, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-070 What effect does a predecessor-successor relationship have on tax rates?** (1) Under RCW 50.29.062(1), if the successor is an employer at the time of the transfer of a business, the successor's tax rate shall remain unchanged for the rest of the calendar year. Beginning on January 1 of the year after the transfer and until the successor qualifies for its own rate, the successor's tax rate for each rate year shall combine the successor's experience with the experience of the predecessor or the relevant portions of the partial predecessor.

(2)(a) Under RCW 50.29.062 (2)(b), if the successor is not an employer at the time of the transfer of a business and if the transfer occurs after January 1, 2005, the successor's tax rate for the rest of the calendar year shall be the same as the predecessor employer at the time of the transfer. Any experience attributable to the predecessor shall be transferred to the successor.

(b) Under RCW 50.29.062 (2)(b)(ii), if there is a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be based on a combination of the successor's experience and the transferred experience from the predecessor.

(c) Under RCW 50.29.062 (2)(b)(i), if there is not a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(i)(B).

(3) If the successor simultaneously acquires businesses from two or more employers with different tax rates, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(iii).

(4) The tax rate on any payroll retained by a predecessor employer shall remain unchanged for the rest of the rate year in which the transfer occurs. Beginning on January 1 after the transfer, the predecessor's tax rate shall be assigned under RCW 50.29.062 (3)(b).

(5) Changes in rate class for a predecessor or successor are effective only for the rate year the information was provided and for subsequent rate years.

(6) This section does not apply to a transfer of less than one percent of a business.

(7) This section does not apply if there is "SUTA dumping" under RCW 50.29.063.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-070, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-080 How does the department determine the percentage of operating assets transferred to a partial successor?** The department will determine the percentage of operating assets transferred primarily by consider-

ing employees transferred. The department will first consider the number of employees transferred, but may also consider the total salaries and wages involved in the transfer and other factors.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-080, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-100 What is "SUTA dumping" and what are the consequences if a significant purpose for the transfer of a business is SUTA dumping?** (1) Congress enacted the "SUTA Dumping Act of 2004" to establish nationwide minimum standards for curbing unlawful manipulation of unemployment taxes by employers. "SUTA" stands for state unemployment tax acts. Federal law describes "SUTA dumping" as the practice by some employers and financial advisors of manipulating state unemployment experience tax rating systems so that employers pay lower state unemployment insurance taxes than their unemployment experience would otherwise allow. Most frequently, it involves merger, acquisition, or restructuring schemes, especially those that shift workforce or payroll.

To comply with federal requirements, Washington enacted RCW 50.29.063, which imposes higher unemployment insurance tax rates on employers if a significant purpose of the transfer of a business was to obtain a lower tax rate. The law also imposes penalties if the intent was to knowingly evade successorship tax provisions or to knowingly promote the evasion of successorship tax provisions.

(2) Examples of SUTA dumping include an employer with a high tax rate because of its experience that:

(a) Dissolves the business in its present structure and reorganizes into a new entity to obtain a lower tax rate;

(b) Buys a smaller business with a low rate, then transfers employees to the smaller business to obtain the low rate; or

(c) Reorganizes and intentionally gives a false description of its business to obtain a lower rate based on a lower industry average.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-100, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-110 What elements must the department prove to establish "SUTA dumping"?** (1) In order to prove SUTA dumping, the department must prove by a preponderance of the evidence that:

(a) A business is a successor or partial successor to a predecessor business under WAC 192-350-010; and

(b) A significant purpose for the transfer of a business was to obtain a lower tax rate under RCW 50.29.063(1).

(2) A "significant purpose" must be more than an incidental purpose, but may be one of many purposes. The department may show that a significant purpose for the transfer was to obtain a lower tax rate by factors such as:

(a) Business records, such as corporate minutes or other documents, show that a lower tax rate was considered as part of the decision for the transfer;

(b) An outside party, such as an accounting firm or tax advisor, recommended the transfer in order to lower the tax rate; or

(c) The employer knew or should have known that transfer of employees to the successor would lower the tax rate

and the actual effect of the transfer was to lower taxes significantly.

(3) For additional penalties under RCW 50.29.063 (2) or (3), the department must also prove that an employer intended to knowingly evade or knowingly evaded successorship provisions or that a nonemployer knowingly promoted the evasion of successorship provisions. "Knowingly" means having actual knowledge or acting with deliberate ignorance or reckless disregard for the prohibitions. "Knowingly" includes an intent to evade, misrepresentation, or willful non-disclosure.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-110, filed 11/21/07, effective 1/1/08.]

**WAC 192-350-120 What penalties apply if there is intent to knowingly evade successorship or knowingly promote the evasion of successorship provisions?** If the department determines that there was intent to knowingly evade successorship or knowingly promote the evasion of successorship provisions, it may assess penalties under RCW 50.29.063 (2) and (3).

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. 07-23-131, § 192-350-120, filed 11/21/07, effective 1/1/08.]